



2025:DHC:4961-DB



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

Reserved on: 03.03.2025
Pronounced on: 12.06.2025

+ **FAO (COMM) 65/2025 & CM APPL. 12743/2025**

RSPL HEALTH PVT. LTD.Appellant

Through: **Mr.Raj Shekhar Rao, Sr. Adv.
& Ms.Swathi Sukumar, Sr.
Adv. with Mr.S.K. Bansal,
Mr.Rishi Bansal, Mr.Rishabh
Gupta & Ms.Ayushi Arora,
Advs.**

versus

SUN PHARMA LABORATORIES LIMITED & ANR

.....Respondents

Through: **Mr.Amit Sibal, Sr. Adv. with
Mr.Sachin Gupta, Mr.Rohit
Pradhan, Mr.Tanmay Sharma,
Ms.Prashansa Singh,
Mr.Saksham Dhingra,
Mr.Ankur Vyas & Mr.Ankit,
Advs.**

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

NAVIN CHAWLA, J.

1. This appeal has been filed under Section 13 of the Commercial Courts Act, 2015 (in short, 'CC Act') challenging the Order dated 15.02.2025, passed by the learned District Judge (Commercial Court-02), New Delhi District, Patiala House Court, in CS (COMM) No.



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914/2024, titled ***RSPL Health Pvt. Ltd. v. Sun Pharma Laboratories Ltd. and Anr.*** (hereinafter referred to as the 'Impugned Order'), dismissing the application filed by the appellant herein under Order XXXIX Rules 1 and 2 the Code of Civil Procedure, 1908 (in short, 'CPC').

Brief Background

2. As the facts and pleadings giving rise to the present appeal have been stated in detail in the Impugned Order itself, we would only give a brief background of these facts necessary for the adjudication of the grounds urged by the parties, in support and against the present appeal.

3. The above suit has been filed by the appellant praying for *inter alia* a decree of permanent injunction restraining the respondents from

dealing in or using the trademark/label 'PRUEASE'  (hereinafter referred to as the 'Impugned Mark') on the ground that it is deceptively similar to appellant's trademark/label 'PRO-EASE'



(hereinafter referred to as the 'Subject Mark').

4. In the plaint, the appellant asserts that it had conceived and adopted the Subject Trademark in the year 2012, in relation to Sanitary napkins, sanitary towels, sanitary pads, menstruation pads, menstruation briefs, sanitary panties, panty liners for hygienic or menstrual purposes, deodorizing agent and refreshener, panty shields for hygienic or menstrual purposes, menstruation tampons, sanitary wipes, paper wipes impregnated with sanitizers, paper wipes



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impregnated with disinfectants, and allied and other cognate goods (hereinafter referred to as the 'said goods').

5. The appellant asserts that it also intends to extend and expand its activities under the subject trademark.

6. The appellant states that to protect its rights under the said trademark, it has obtained the following registrations of the Subject Mark under the provisions of the Trade Marks Act, 1999 (in short, 'TM Act') for various goods and services:-

S. No.	Trade Mark	Application No.	Date of Filing	Class	Status	User Details
1.	PROEASE	2450092 No disclaimer	27/12/2012	5	Registered Renewed upto 27/12/2032	Proposed to be used
2.	PROEASE GO-LONG	2830004 No disclaimer	20/10/2014	5	Registered & Renewed upto 20/10/2024	Proposed to be used
3.	Pro-Ease	3160408 No disclaimer	14/01/2016	35	Registered & Renewed upto 14/01/2026	27-12-2012
4.	Pro-Ease	3160409 No disclaimer	14/01/2016	39	Registered & Renewed upto 14/01/2026	27-12-2012
5.	PRO-EASE READY	3366792 No disclaimer	19/09/2016	5	Registered & Renewed upto 19/09/2026	Proposed to be used
6.	PRO EASE LABEL 	3157037 No disclaimer	01-12-2016	35	Registered & Renewed upto 01-12-2026	27-12-2012

7. The appellant has also applied for seeking registration of its trademarks in other forms, details of which the appellant gives as under:-



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S.No.	Trade Mark	Application No.	Date of Filing	Class	Status
1.	PROEASE	2662319	20-01-2014	5	Pending
2.	Pro-ease "Clean"	3311628	16-07-2016	5	Registered
3.	Pro-ease "Swachh"	3311629	16/07/2016	5	Registered
4.	Pro-ease "Swachh" 	3311630	16/07/2016	5	Registered
5.	PRO-EASE SWACHH LABEL	3444646	28/12/2016	5	Pending
6.	Pro-ease DAY & NIGHT	3607337	05/08/2017	5	Registered
7.	Pro-ease DAY & NIGHT COMBO	3721671	08/01/2018	5	Registered
8.	PROEASE BEST XL	3984024	26/10/2018	5	Registered
9.	PROEASE GO XL	3984023	26/10/2018	5	Registered
10.	Pro-ease Go XL	4483389	30/03/2020	5	Registered
11.	PROEASE Dry & Comfortable	4491568	25/04/2020	5	Pending
12.	PROEASE DOUBLE DRY TOP SHEET	4491546	25/04/2020	5	Registered
13.	PROEASE 3X ABSORBENCY AND TENTION	4491545	25/04/2020	5	Registered
14.	PRO-EASE GO ULTRA XL+	4677415	28/09/2020	5	Registered

8. The appellant further asserts that it has built up an immense reputation in the Subject Mark and discloses the following sales figures and advertisement expenses:-

Sales Figures

YEAR	SALE AMOUNT (IN lakhs)
2014-15	112.01
2015-16	2,141.24
2016-17	7,150.23
2017-18	9,743.23

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Signing Date: 12.06.2025
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2018-19	13,159
2019-20	15,237
2020-21	25,404
2021-22	32,202

Advertisement Expenditure

YEAR	ADVERTISEMENT EXPENDITURE (IN lakhs)
2014-15	77.20
2015-16	1,661.86
2016-17	1,440.82
2017-18	1,854.73
2018-19	1,449.31
2019-20	1,873.32
2020-21	1,680
2021-22	1,124

9. The appellant asserts that the respondents have dishonestly adopted the Impugned Trademark, which is identical/deceptively similar to the Subject Trademark, and is bound to cause confusion and deception in the normal course of business activities, thereby not only infringing the registered trademark of the appellant, but also passing off of the same.

10. The appellant filed the above suit claiming therein that it first came to know of the adoption of the Impugned Mark by the respondents in December 2020, when it received a notice of opposition No. 1070676 dated 05.11.2020, against its trademark application No. 4491568 in Class 5 for registration of the said trademark. The appellant asserted that the respondents thereafter have not filed evidence under Rule 45 of the Trade Marks Rules, 2017 (in short, 'TM Rules') till the filing of the suit. The appellant asserted that



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it again received notices of opposition Nos. 1191872 and 1191873 dated 18.10.2020 against the appellant's trademark applications Nos. 5426855 in Class 5 and 5426854 in Class 3. The respondents, however, again had not filed affidavit of evidence under Rule 45 of the TM Rules till the filing of the suit. The appellant stated that its trademark application No. 5426855 in Class-5 has been erroneously abandoned, and the appellant has filed for a review thereagainst.

11. The appellant further stated that in January 2024, it came across publication in the trademark journal of an application filed by the respondent for registration of the Impugned Trademark bearing No.5353750 in Class 5 dated 03.03.2022, falsely claiming user since 2017, for a wide range of medicinal and pharmaceutical preparations products, including hygienic and sanitary preparations for medical purposes. The appellant has filed opposition to the same.

12. The appellant asserted that on further search it found that the respondents had previously also filed an application No. 3562708 in Class 5 in the year 2017 for the registration of the Impugned Trademark, on a '*proposed to be used*' basis, but the same was not prosecuted and was deemed as abandoned by the trademark registry.

13. The appellant asserted that it is only in the first week of November 2024, that it came across advertisements on the interactive online markets for the sale of the medicine under the Impugned Trademark. Further inquiry revealed that the respondents have recently started using, selling, soliciting, and networking for the goods under the Impugned Trademark in the markets at Delhi.



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14. On the other hand, the respondents filed its written statement contending therein that the respondent no.1 is a wholly owned subsidiary of Sun Pharmaceutical Industries Limited (hereinafter referred to as 'SPIL'). SPIL started business of marketing pharma products in the year 1978 and manufactures, deals in, and trades into pharmaceutical goods, preparation and allied goods and services.

15. It is the case of the respondents that on or about the year 2017, the respondents independently coined and adopted the Impugned Mark in relation to medicinal and pharmaceutical preparations and has been continuously using the same since then without any interruptions. It applied for the registration of the same *vide* application no. 3562708 dated 02.06.2017 in Class 5, which was abandoned for non-prosecution. Thereafter, the respondents filed another application for the said trade mark *vide* application no. 5353750 dated 03.03.2022 with a prior user claim from 2017 in Class 5 and the said application is still pending before the learned Registrar of Trade Marks.

16. It further contended that the term 'PRU' in the respondents' mark is derived from the active pharmaceutical ingredient Prucalopride, while 'Ease' is a term indicating easy relief from constipation.

17. The respondents further assert that it has built up an immense reputation in the Impugned Mark and disclose the following sales:-



Sales Figure

Financial Year	Rs. (In Lacs)
2017-2018	204.36
2018-2019	821.20
2019-2020	1205.25
2020-2021	1180.50
2021-2022	1566.64
2022-2023	1816.17
2023-24	1867.05
GRAND TOTAL	8661.17

18. The respondents contended that for infringement to arise, confusion among the public must be probable or inevitable, and in the present case, no reasonable consumer is likely to confuse a sanitary pad with a medicine designed for constipation relief.

19. The respondents also contended that the appellant has actively concealed in the plaint the Trade Mark Application, which clearly included documents showcasing respondents' use of the Impugned Mark since 2017.

Previous Proceedings

20. Before we proceed further, it is also necessary to point out that the learned District Judge, by an *ad interim ex parte* Order dated 03.12.2024, had granted *ad-interim* injunction in favour of the appellant. The same was challenged by the respondents by way of an appeal, being FAO (COMM) 241/2024. The said appeal was disposed of by an Order dated 18.12.2024 of this Court, with the consent of the



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parties setting aside the *ad interim ex parte* order of injunction and remitting back the application to the learned District Judge to decide the claim of the appellant for an *interim* injunction afresh. The Impugned Order has been passed by the learned District Judge on such remand.

Impugned Order:

21. The learned District Judge in the Impugned Order, while rejecting the application of the appellant, has inter alia observed as under:-

- a) The appellant has even *prima facie* failed to show that any reasonable consumer or unwary purchaser is likely to get confused between a sanitary pad (product of the appellant), and a medicine designed for constipation relief (product of the respondent);
- b) The trade channels and routes in respect of hygiene products like sanitary pads and napkins are quite different from that of medicinal and pharmaceutical goods, therefore, the appellant has failed to show that there is any likelihood of confusion or deception within the meaning of Section 2(h) read with Section 29(2) of the Trade Marks Act;
- c) Products of the appellant and the respondents have starkly different packaging and design, which would distinguish their goods;



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- d) The respondents have claimed to be the prior user of the Impugned Mark, with the earliest use claimed to be of the year 2017, whereas the appellant has never used its marks for pharmaceuticals;
- e) The respondents have stated that it does not intend to enter into the field of manufacturing or selling sanitary napkins/pads;
- f) The appellant is also not entitled to the discretionary relief of injunction as it withheld the user affidavit filed by the respondents in the trademark application(s) to show use of its marks since 2017; and,
- g) The respondents have *bona fide* adopted the Impugned Mark, deriving the first three alphabets of its name from the chemical used in the product, that is, prucalopride, and the word 'Ease' indicating easy relief from constipation. It has also used a tagline for promoting its products accordingly.

Submissions of the learned senior counsel for the appellant

22. Mr. Raj Shekhar Rao, the learned senior counsel appearing for the appellant submits that the learned District Judge has failed to appreciate that the appellant has a right to expand use of the Subject Trade Mark to allied and cognate goods, such as pharmaceuticals for treatment of ailments like menstrual cramps and other related use. The respondents, therefore, cannot be allowed to adopt a deceptively



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similar mark only on the ground that presently, the appellant is not using its trade mark for such goods.

23. He further submits that the claim of the use of the mark by the respondents since 2017, is also not supported by any documents. In the journal 'Drug Today', issue of July 2017, the advertisement of the respondents stated that the drug under the Impugned Mark was to be launched soon. The invoices that have been placed on record are indicating sale of the respondents products to their own entity, namely Aditya Medisales Limited and, therefore, do not inspire any confidence. He submits that, therefore, the learned District Judge has erred in accepting the claim of the respondent *qua* the adoption and use of its mark since the year 2017.

24. He further submits that the respondents are using its mark not only for the medicine for giving relief to constipation, but also for allied and cognate goods. Therefore, the learned District Judge should at least have granted an injunction in favour of the appellant restraining the respondents from using the Impugned Mark for the goods of the appellant, that is, sanitary napkins/pads etc.

25. He further submits that admittedly the goods of the parties fall in Class 5 of the Trademark Classification, for which the appellant is a registered proprietor since 27.12.2012. On the other hand, the respondents do not have any trade mark registration for its Impugned Mark, and has in fact let the earlier application to be treated as abandoned. It is only by a subsequent application filed on 03.03.2022, that the respondents again sought statutory protection of their mark by claiming its registration. He submits that being a registered proprietor



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of the Subject Mark, the appellant was entitled to claim protection of its mark against the unauthorized use by the respondents, who cannot be claimed to be the proprietor of its mark.

26. The learned senior counsel for the appellant further submits that the respondents were also estopped from claiming that the trade channel of the goods of the appellant and the respondents are different. In its opposition to appellant's registration application, the respondents had claimed that the goods are allied and the use of the marks is bound to cause confusion and deception. It is only later that the respondents allowed its opposition to be abandoned.

27. He submits that the learned District Judge erred in placing reliance on the reputation of the mark 'Sun Pharma' of the respondents when that was not even in issue. It was the subsidiary mark 'Pru-ease', which was in issue before the learned District Judge. He submits that as far as this subsidiary mark is concerned, against the sales revenue of Rs. 300 crores of the appellant, the respondents, even as per their claim, have revenue of only Rs. 18 crores, therefore, have no reputation to protect in the mark.

28. He submits that the learned District Judge also erred in its finding that the appellant had concealed material facts in the suit. He submits that the appellant was not in possession of the alleged proof of user of the Impugned Mark filed by the respondents, as the respondents had failed to place these documents on record as part of the evidence under Rule 45(2) of the TM Rules in support of their opposition to the appellant's trade mark.



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29. He submits that the learned District Judge has further erred in invoking the principle of estoppel against the appellant based on its submissions before the learned Registrar of Trade Marks for its registration of the mark. He submits that these statements were made with respect to third parties, and not the respondents and, therefore, were not relevant for the adjudication of the *interim* application filed by the appellant.

Submissions of the learned senior counsel for the respondents

30. On the other hand, Mr. Amit Sibal, the learned senior counsel for the respondents, submits that not only did the appellant not press its claim under Section 29(4) of the TM Act before the learned District Judge, but even otherwise, the same was not made out, as the two marks are not deceptively similar to each other, are being used for distinct products, and the Impugned Mark has been adopted by the respondents *bona fide*.

31. He further submits that the appellant was also not entitled to the discretionary relief on account of concealment of the user affidavit filed by the respondents, which showed that the respondents had been using the mark since the year 2017. The appellant also concealed its own stand in reply to the Examination Report and the counter-statement, where it had taken the stand that the sanitary napkin, pharmaceutical goods, and ayurvedic medicines are distinct and the use of the marks will not cause any confusion. He submits that the appellant is estopped from approbating and reprobating from the stand taken by the appellant before the Trade Mark Registry. In support of



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his submissions, he places reliance on *K. Jayaram & Ors. v. BDA & Ors.*, (2022) 12 SCC 815, *Oswal Fats & Oils Ltd. v. Commr. (Admn.) & Ors.*, (2010) 4 SCC 728, *SK Sachdeva & Anr. v. Shri Educare Limited & Anr.*, 2016 SCC OnLine Del 473, *ICOMM Tele Ltd. v. BSNL & Anr.*, 2019 SCC OnLine Del 8667; and *Preetendra Singh Aulakh v. Green Light Foods (P) Ltd.*, 2023 SCC OnLine Del 2492.

32. He submits that though the goods may fall under Class 5, they are completely distinct and cannot be termed as allied or cognate. They are sold through different trade channels and there is absolutely no likelihood of confusion being caused by the use of the marks. In support, he places reliance on *United Brothers v. United Traders*, 1982 SCC OnLine Del 20.

33. He submits that there can also be no initial interest confusion because of the distinct nature of the goods. He submits that the respondents had no intent of using the Impugned Mark for sanitary pads/napkins or other like goods, and it is for this reason that it withdrew its opposition to the appellant's application seeking registration of its marks for those goods. He submits that the respondents have, in fact, shown its *bona fide* by withdrawing these oppositions. He submits that the respondents have also sought deletion of 'hygiene and sanitary preparation etc.' from its goods classification for its own application seeking registration of the Impugned Mark.

34. He submits that the respondents being the prior user of the Impugned Mark for the pharmaceutical goods, the appellant cannot be allowed to use the same for such goods.



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Analysis and findings

35. We have considered the submissions made by the learned counsels for the parties.

36. At the outset, we would note that the present appeal challenges the Impugned Order which is passed in exercise of the discretionary jurisdiction vested in the learned District Judge by way of Order XXXIX Rules 1 and 2 of the CPC. The Courts have time and again cautioned that in appeals challenging the orders passed by the learned Trial Court in exercise of its discretionary jurisdiction, the appellate court will not interfere with, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. The appellate court will not re-assess the material and seek to reach a conclusion if it would have exercised its discretion differently, but will only interfere if the discretion has been exercised in a perverse manner by the Trial Court. Recently, this principle has been reiterated and explained by the Supreme Court in ***Ramakant Ambalal Choksi v. Harish Ambalal Choksi & Ors.***, 2024 SCC OnLine SC 3538, by holding as under:-

“20. Order 43 of the CPC specifies the orders against which an appeal lies. Sub-Rule (r) of Rule 1 of the said order provides that an appeal would lie against an order made under Rules 1, 2, 2A, 4 and 10 of Order 39 of the CPC respectively.

21. The law in relation to the scope of an appeal against grant or non-grant of interim injunction was laid down by this Court in Wander Ltd. v. Antox India P. Ltd., 1990 Supp SCC 727. Antox brought an action of



passing off against Wander with respect to the mark Cal-De-Ce. The trial court declined Antox's plea for an interim injunction, however, on appeal the High Court reversed the findings of the trial judge. This Court, upon due consideration of the matter, took notice of two egregious errors said to have been committed by the High Court:

- a. First, as regards the scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order; and*
- b. Secondly, the weakness in ratiocination as to the quality of Antox's alleged user of the trademark on which the passing off action is founded.*

22. *With regards to (a), this Court held thus:*

“In such appeals, the appellate court will not interfere with the exercise of discretion of the court of the 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 ... the appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below ... 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.”

23. *This Court, while arriving at the above findings, relied on its earlier judgment in Printers (Mysore) v. Pothan Joseph, 1960 SCC OnLine SC 62 where it was held thus:*

“[...] as has been observed by Viscount Simon LC in Charles Osenton & Co v. Johnston - the law as to reversal by a court of appeal of an order made by a judge



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below in the exercise of his/her discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case.”

24. *It is pertinent to note that in Printers (supra) this Court had held that ignoring relevant facts is also a ground for interfering with the discretion exercised by the trial court. Furthermore, Viscount Simon LC in Charles Osenton & Co v. Johnston, [1942] A.C. 130, after stating the above, went on to quote Lord Wright's decision in Evans v. Bartlam, [1937] A.C. 473:*

“It is clear that the court of appeal should not interfere with the discretion of a judge acting within his jurisdiction unless the court is clearly satisfied that he was wrong. But the court is not entitled simply to say that if the judge had jurisdiction and had all the facts before him, the court of appeal cannot review his order unless he is shown to have applied a wrong principle. The court must, if necessary, examine anew the relevant facts and circumstances in order to exercise a discretion by way of review which may reverse or vary the order.”

25. *In Evans (supra) case, Lord Wright made it clear that while adjudicating upon the discretion exercised by the trial court, the appellate court is obliged to consider the case put forward by the appellant in favour of its argument that the trial court exercised its discretion arbitrarily or incorrectly in the circumstances.*

26. *What flows from a plain reading of the decisions in Evans (supra) and Charles Osenton (supra) is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:*

a. Examine whether the discretion has been properly exercised, i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and



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b. In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders.

27. The principles of law explained by this Court in Wander's (supra) have been reiterated in a number of subsequent decisions of this Court. However, over a period of time the test laid down by this Court as regards the scope of interference has been made more stringent. The emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit.

28. In Neon Laboratories Ltd. v. Medical Technologies Ltd., (2016) 2 SCC 672 this Court held that the Appellate Court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. In other words, the Court took the view that to interfere against an order granting or declining to grant a temporary injunction, perversity has to be demonstrated in the finding of the trial court.

29. In Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan, (2013) 9 SCC 221 this Court emphasised on the principles laid down in Wander (supra) and observed that while the view taken by the appellate court may be an equally possible view, the mere possibility of taking such a view must not form the basis for setting aside the decision arrived at by the trial court in exercise of its discretion under Order 39 of the CPC. The basis for substituting the view of the trial court should be malafides, capriciousness, arbitrariness or perversity in the order of the trial court. The relevant observations are extracted below:

"20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim



mandatory injunction was in serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the Appellate Court was wrong in its conclusions what is sought to be emphasized is that as long as the view of the trial court was a possible view the Appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in Wander Ltd. v. Antox India (P) Ltd."

(Emphasis supplied)

30. This Court in *Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd.*, (2023) 1 SCC 634 observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. It further observed that if the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.

31. This Court in *Monsanto Technology LLC v. Nuziveedu Seeds Ltd.*, (2019) 3 SCC



381, observed that the appellate court should not usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.

32. The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well settled principles governing the scope of jurisdiction of appellate court under Order 43 of the CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in the *Wander* (supra) case.

37. The Supreme Court in ***Ramakant*** (supra), also explained the meaning of the term ‘perverse’, as under:

“35. Any order made in conscious violation of pleading and law is a perverse order. In *Moffett v. Gough*, (1878) 1 LR 1r 331, the Court observed that a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In *Godfrey v. Godfrey*, 106 NW 814, the Court defined “perverse” as “turned the wrong way”; not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

36. The expression “perverse” has been defined by various dictionaries in the following manner:

a. Oxford Advanced Learner's Dictionary of Current English, 6th Ed.

Perverse - Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

b. Longman Dictionary of Contemporary



English - International Edition

Perverse - Deliberately departing from what is normal and reasonable.

c. The New Oxford Dictionary of English - 1998 Edition

Perverse - Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

d. New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition)

Perverse - Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

e. Stroud's Judicial Dictionary of Words & Phrases, 4th Ed.

Perverse - A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

37. The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity. (See : Damodar Lal v. Sohan Devi, (2016) 3 SCC 78)"

(Emphasis Supplied)

38. In ***Ramakant*** (supra), the Supreme Court also reiterated the guiding principles governing the grant of temporary injunction, as under:

"33. In the case of Anand Prasad Agarwal v. Tarkeshwar Prasad, (2001) 5 SCC 568, it was held by this Court that it would not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction.



34. The burden is on the plaintiff, by evidence aliunde by affidavit or otherwise, to prove that there is “a prima facie case” in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that noninterference by the court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that “the balance of convenience” must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim



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injunction pending the suit. (See : Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719.)”
(Emphasis Supplied)

39. Applying the above principles to the facts of the present case, there is no dispute that the appellant is using its Subject Mark for goods like sanitary napkins, sanitary towels, pads etc., while the respondents are using their Impugned Mark for medicine claimed to be giving relief against constipation. The two goods are neither allied nor cognate. The learned District Judge, in our opinion, has rightly held that the nature of goods, their trade channel, their purpose, and the intended consumers are distinct, and there is no likelihood of confusion being caused by the use of the marks for such goods.

40. Section 29 of the TM Act, reads as under:-

“Section 29. Infringement of registered trade marks.

(1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of--

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or

(b) its similarity to the registered trade mark and the identity or similarity of the



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goods or services covered by such registered trade mark; or

(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

(3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.

(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which--

(a) is identical with or similar to the registered trade mark; and

(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and

(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.

(5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered.

(6) For the purposes of this section, a person uses a registered mark, if, in particular, he--

(a) affixes it to goods or the packaging thereof;

(b) offers or exposes goods for sale, puts them on the market, or stocks them for those purposes under the registered trade



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mark, or offers or supplies services under the registered trade mark;

(c) imports or exports goods under the mark; or

(d) uses the registered trade mark on business papers or in advertising.

(7) A registered trade mark is infringed by a person who applies such registered trade mark to a material intended to be used for labeling or packaging goods, as a business paper, or for advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee.

(8) A registered trade mark is infringed by any advertising of that trade mark if such advertising--

(a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or

(b) is detrimental to its distinctive character; or

(c) is against the reputation of the trade mark.

(9) Where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation and reference in this section to the use of a mark shall be construed accordingly.

41. In ***Renaissance Hotel Holdings Inc. v. B. Vijaya Sai & Ors.***, (2022) 5 SCC 1, the Supreme Court explained the various facets of Section 29 of the TM Act as under:-

“34. Sub-section (1) of Section 29 of the said Act provides that a registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively



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similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

35. Sub-section (2) of Section 29 of the said Act provides that a registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

36. Sub-section (3) of Section 29 of the said Act is of vital importance. It provides that in any case falling under clause (c) of sub-section (2) of Section 29 of the said Act, the court shall presume that it is likely to cause confusion on the part of the public.

37. A perusal of sub-section (2) of Section 29 of the said Act would reveal that a registered trade mark would be infringed by a person, who not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of the three eventualities mentioned in clauses (a), (b) and (c), is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark. The first eventuality covered by clause (a) being its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark. The second one covered by clause (b) being its similarity to the registered trade mark and the identity or similarity of the goods



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or services covered by such registered trade mark. The third eventuality stipulated in clause (c) would be its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark.

38. It is, however, pertinent to note that by virtue of sub-section (3) of Section 29 of the said Act, the legislative intent insofar as the eventuality contained in clause (c) is concerned, is clear. Sub-section (3) of Section 29 of the said Act provides that in any case falling under clause (c) of sub-section (2) of Section 29 of the said Act, the Court shall presume that it is likely to cause confusion on the part of the public.

39. Sub-section (4) of Section 29 of the said Act provides that a registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with or similar to the registered trade mark; and is used in relation to goods or services which are not similar to those for which the trade mark is registered; and the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.

40. Sub-section (5) of Section 29 of the said Act provides that a registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered.

41. Sub-section (6) of Section 29 of the said Act provides that for the purposes of this section, a person uses a registered mark, if, in particular, he affixes it to goods or the packaging thereof; offers or exposes goods for sale, puts them on the market, or stocks them for those purposes under the registered trade



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mark, or offers or supplies services under the registered trade mark; imports or exports goods under the mark; or uses the registered trade mark on business papers or in advertising.

42. Sub-section (7) of Section 29 of the said Act provides that a registered trade mark is infringed by a person who applies such registered trade mark to a material intended to be used for labelling or packaging goods, as a business paper, or for advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee.

43. Sub-section (8) of Section 29 of the said Act provides that a registered trade mark is infringed by any advertising of that trade mark if such advertising takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or is detrimental to its distinctive character; or is against the reputation of the trade mark.

44. Sub-section (9) of Section 29 of the said Act provides that where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation and reference in this section to the use of a mark shall be construed accordingly.

52. It could thus be seen that this Court again reiterated that the question to be asked in an infringement action is as to whether the defendant is using a mark which is same as, or which is a colourable imitation of the plaintiff's registered trade mark. It has further been held that though the get-up of the defendant's goods may be so different from the plaintiff's goods and the prices may also be so different that there would be no probability of deception of the public, nevertheless even in such cases i.e. in an infringement action, an



injunction would be issued as soon as it is proved that the defendant is improperly using the plaintiff's mark. It has been reiterated that no case of actual deception nor any actual damage needs to be proved in such cases. This Court has further held that though two actions are closely similar in some respects, in an action for infringement, where the defendant's trade mark is identical with the plaintiff's trade mark, the Court will not enquire whether the infringement is such as is likely to deceive or cause confusion.

56. It is further clear that in case of an eventuality covered under clause (c) of sub-section (2) of Section 29 in view of the provisions of sub-section (3) of Section 29 of the said Act, the Court shall presume that it is likely to cause confusion on the part of the public.

57. The perusal of sub-section (4) of Section 29 of the said Act would reveal that the same deals with an eventuality when the impugned trade mark is identical with or similar to the registered trade mark and is used in relation to goods or services which are not similar to those for which the trade mark is registered. Only in such an eventuality, it will be necessary to establish that the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark. The legislative intent is clear by employing the word "and" after clauses (a) and (b) in sub-section (4) of Section 29 of the said Act. Unless all the three conditions are satisfied, it will not be open to the proprietor of the registered trade mark to sue for infringement when though the impugned trade mark is identical with the registered trade mark, but is used in relation to goods or services which are not similar to those for which the trade mark is registered. To sum up, while sub-section (2) of Section 29



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of the said Act deals with those situations where the trade mark is identical or similar and the goods covered by such a trade mark are identical or similar, sub-section (4) of Section 29 of the said Act deals with situations where though the trade mark is identical, but the goods or services are not similar to those for which the trade mark is registered.”

42. In **Nandhini Deluxe v. Karnataka Coop. Milk Producers Federation Ltd.**, (2018) 9 SCC 183, the Supreme Court held that if a trader or manufacturer actually trades in or manufactures only one or some of the articles coming under a broad classification and such trader or manufacturer has no *bona fide* intention to trade in or manufacture other goods or articles which also fall under the said broad classification, such trader or manufacturer should not be permitted to enjoy monopoly in respect of all the articles which may come under such broad classification and by that process preclude the other traders or manufacturers from getting registration of separate and distinct goods which may also be grouped under the broad classification. We quote from the judgment, as under:-

“32. Having arrived at the aforesaid conclusion, the reasoning of the High Court that the goods belonging to the appellant and the respondent (though the nature of goods is different) belong to the same class and, therefore, it would be impermissible for the appellant to have the registration of the trade mark concerned in its favour, would be meaningless. That apart, there is no such principle of law. On the contrary, this Court in Vishnudas Trading [Vishnudas Trading v. Vazir Sultan Tobacco Co. Ltd., (1997) 4 SCC 201] has decided otherwise as can be seen from the reading of paras 47 and 48 of the said judgment: (SCC pp. 223-25)



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“47. The respondent Company got registration of its brand name “Charminar” under the broad classification “manufactured tobacco”. So long such registration remains operative, the respondent Company is entitled to claim exclusive use of the said brand name in respect of articles made of tobacco coming under the said broad classification “manufactured tobacco”. Precisely for the said reason, when the appellant made application for registration of quiwam and zarda under the same brand name “Charminar”, such prayer for registration was not allowed. The appellant, therefore, made application for rectification of the registration made in favour of the respondent Company so that the said registration is limited only in respect of the articles being manufactured and marketed by the respondent Company, namely, cigarettes. In our view, if a trader or manufacturer actually trades in or manufactures only one or some of the articles coming under a broad classification and such trader or manufacturer has no bona fide intention to trade in or manufacture other goods or articles which also fall under the said broad classification, such trader or manufacturer should not be permitted to enjoy monopoly in respect of all the articles which may come under such broad classification and by that process preclude the other traders or manufacturers from getting registration of separate and distinct goods which may also be grouped under the broad classification. If registration has been given generally in respect of all the articles coming under the broad classification and if it is established that the trader or manufacturer who got such registration had not intended to use any other article except the articles being used by such trader or manufacturer, the



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registration of such trader is liable to be rectified by limiting the ambit of registration and confining such registration to the specific article or articles which really concern the trader or manufacturer enjoying the registration made in his favour. In our view, if rectification in such circumstances is not allowed, the trader or manufacturer by virtue of earlier registration will be permitted to enjoy the mischief of trafficking in trade mark. Looking to the scheme of the registration of trade mark as envisaged in the Trade Marks Act and the Rules framed thereunder, it appears to us that registration of a trade mark cannot be held to be absolute, perpetual and invariable under all circumstances. Section 12 of the Trade Marks Act prohibits registration of identical or deceptively similar trade marks in respect of goods and description of goods which is identical or deceptively similar to the trade mark already registered. For prohibiting registration under Section 12(1), goods in respect of which subsequent registration is sought for, must be (i) in respect of goods or description of goods being same or similar and covered by earlier registration, and (ii) trade mark claimed for such goods must be same or deceptively similar to the trade mark already registered. It may be noted here that under sub-section (3) of Section 12 of the Trade Marks Act, in an appropriate case of honest concurrent use and/or of other special circumstances, same and deceptively similar trade marks may be permitted to another by the Registrar, subject to such conditions as may deem just and proper to the Registrar. It is also to be noted that the expressions "goods" and "description of goods" appearing in Section 12(1) of the Trade Marks Act indicate that registration may be made in respect of one or more goods or of all



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goods conforming a general description. The Trade Marks Act has noted distinction between description of goods forming a genus and separate and distinctly identifiable goods under the genus in various other sections e.g. goods of same description in Section 46, Sections 12 and 34 and class of goods in Section 18, Rules 12 and 26 read with Fourth Schedule to the Rules framed under the Act.

48. The “class” mentioned in the Fourth Schedule may subsume or comprise a number of goods or articles which are separately identifiable and vendible and which are not goods of the same description as commonly understood in trade or in common parlance. Manufactured tobacco is a class mentioned in Class 34 of Fourth Schedule of the Rules but within the said class, there are a number of distinctly identifiable goods which are marketed separately and also used differently. In our view, it is not only permissible but it will be only just and proper to register one or more articles under a class or genus if in reality registration only in respect of such articles is intended, by specifically mentioning the names of such articles and by indicating the class under which such article or articles are to be comprised. It is, therefore, permissible to register only cigarette or some other specific products made of “manufactured tobacco” as mentioned in Class 34 of Fourth Schedule of the Rules. In our view, the contention of Mr Vaidyanathan that in view of change in the language of Section 8 of the Trade Marks Act as compared to Section 5 of the Trade Marks Act, 1940, registration of trade mark is to be made only in respect of class or genus and not in respect of articles of different species under the genus is based on incorrect appreciation of Section 8 of the Trade Marks Act and Fourth Schedule of the Rules.”



(emphasis supplied)

33. We may mention that the aforesaid principle of law while interpreting the provisions of the Trade and Merchandise Marks Act, 1958 is equally applicable as it is unaffected by the Trade Marks Act, 1999 inasmuch as the main object underlying the said principle is that the proprietor of a trade mark cannot enjoy monopoly over the entire class of goods and, particularly, when he is not using the said trade mark in respect of certain goods falling under the same class. In this behalf, we may usefully refer to Section 11 of the Act which prohibits the registration of the mark in respect of the similar goods or different goods but the provisions of this section do not cover the same class of goods.

(Emphasis Supplied)

43. In the present case as well, the goods are distinct, having distinct and separate trade channels, and there is no likelihood of confusion being caused to the public by the use of the marks. There is also no case of passing off made out by the appellant as the packaging of the products and the manner of the depiction of the mark along with other additional ingredients of the label do not indicate any likelihood of confusion resulting in the use of the same.

44. As far as the plea of the appellant that non-grant of injunction may prevent the appellant from expanding its business to pharmaceuticals, apart from being based on mere conjectures, even otherwise, cannot be accepted. It is common practice that for distinct goods the manufacturers use distinct trademarks. In fact, it is own case of the appellant that it has other trademarks like GHARI/GHADI Label, VENUS, REDCHIEF, NAMASTE INDIA etc.. The above



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plea, therefore, appears to be a red herring, rather than any genuine concern.

45. Equally, the plea of the appellant that the respondents may venture out to the products like sanitary napkins, etc., has been answered by the respondents by stating that they do not intend to use their marks for these goods. This intent has also been evidenced by the respondents withdrawing their oppositions to the applications of the appellant seeking registration of its mark.

46. Though much was also stated on the evidence of user of the mark by the respondents, in our view, at this stage, given the evidence placed on record by the respondents, it cannot be said that their claim of user of their mark since 2017 can be disbelieved. Moreover, selling its products through one selling partner cannot lead to an inference that the invoices are not genuine. These are, in any case, matters of evidence and trial.

47. As far as the plea of the appellant that it cannot be held guilty of concealment, in our opinion, the same has lost significance once on merit we find that the appellant, even otherwise, was not entitled to grant of an interim injunction. However, we must state that the conduct of the appellant is not completely *bona fide* and transparent. Once it has been disclosed that the appellant was aware of the application filed by the respondents seeking registration of its mark, and it was aware of the user affidavit filed along with it, the appellant should have placed the same before the learned District Judge along with the suit itself. It appears to have intentionally withheld this document as it wanted to claim that the respondents came into market



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only in November 2024, that is, just before the filing of the suit, so that it can make out a case for grant of *ex parte interim* relief.

48. For grant of an *interim* injunction, the appellant has to meet the trinity test that is, of showing a good *prima facie* case, balance of convenience in its favour, and that irreparable harm shall be caused to it in case such *interim* order is not granted. The appellant has failed to make a *prima facie* case in its favour. The balance of convenience is also in favour of the respondents and against the appellant inasmuch as the respondents have, at least *prima facie*, been able to show the user of their mark since 2017, that is, for a period of almost seven years prior to the filing of the suit. The adoption of the Impugned Mark by the respondents has also been explained by it, and the same appears to be *bona fide* and in accordance with industry practice, wherein alphabets are taken from the chemical compound the product is made of, and additions are made to it to make it a coined mark. In the present case, as noted hereinabove, the respondents have taken the first three alphabets from the chemical compound prucalopride, and have added the word 'Ease' to the same, for reflecting the ultimate use of the medicine, that is, giving relief to constipation. As far as irreparable harm and injury is concerned, the appellant can always be compensated in terms of the damages, in case, it is later found to have made out a case for the same.

49. For the reasons stated hereinabove, we find no merit in the present appeal. The same is dismissed. The pending application also stands dismissed.



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50. We, however, make it clear that the observations made hereinabove shall in no manner influence the trial as they are only *prima facie* in nature.

NAVIN CHAWLA, J

SHALINDER KAUR, J

JUNE 12, 2025/rv/VS

Click here to check corrigendum, if any