IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 3540 OF 2022
IN
COMM IP SUIT NO. 213 OF 2022

Laboratoires Griffon Private Limited & Anr. ...Plaintiffs
Versus
Rajiv Mukul & Ors. ...Defendants

Mr. Hiren Kamod a/w Mr. Kiran Mehta, Ms. Archita Gharat and Mr. Anees Patel i/b Mr. Kiran Mehta, for the Applicants/Plaintiffs.
Mr. Atmaram Patade a/w Mr. Pranit Pawar, Mr. Bhagawan Kasture. Mr. Suraj Naik, Mr. Akshay Adivarekar, Mr. Atharva Kudtarkar, Ms. Shraddha Patil i/b Mr. Chetan Alai, for Defendant Nos. 1, 2 & 4.

CORAM : ARIF S. DOCTOR, J.
RESERVED ON : 16th DECEMBER 2025
PRONOUNCED ON : 13th JANUARY 2026

JUDGMENT:

1. The Applicants, who are the Plaintiffs in the captioned Suit, have by way of the present Interim Application sought the following substantive relief :

"a) that pending the hearing and final disposal of the suit, the Respondents by themselves, their partners, directors, sister/group companies, employees, servants, agents, dealers, stockists, distributors, assignees, licensees and all those connected with them in their business be restrained by an order and injunction of this Hon'ble Court from using, manufacturing, selling, marketing, promoting, advertising, distributing, exporting. importing, exhibiting, displaying and/or offering for sale or otherwise in shops

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or on their website, www.zeelabpharmacy.com or any other website owned, managed and/or controlled by the Respondent/s or on any other e-commerce platforms/sites or websites and/or using in any manner in relation to their medicinal and pharmaceutical preparations the trade marks consisting of the word GLYNET and/or GLYZET with or without any prefixes or suffixes any mark deceptively similar thereto and/or any mark identical and/or deceptively similar to the Applicant No.1's trade mark GLIMET registered under No.579544 and GLIMET DS registered under No.2676118 both in class 05, so as to infringe the Applicant's registered trademark and from passing off or enable others from passing off their products and goods as and for the goods and products of the Applicants and/or forming any association with the Applicants by using the impugned marks;

Brief Background:

2. Plaintiff No. 1 is the owner and registered proprietor of the trade marks "GLIMET" and "GLIMET DS" (the "**GLIMET trade marks**"). Plaintiff No. 2 is a sister concern and group company of Plaintiff No. 1 , to whom Plaintiff No. 1 has granted a non-exclusive limited right to manufacture and use the trade marks "GLIMET" and "GLIMET DS" strictly subject to the supervision, control and oversight of Plaintiff No. 1 and on the terms and conditions more particularly set out in the said agreements.

3. The Plaintiffs had, in the year 2021, instituted Commercial IP Suit No. 2052 of 2021 ("**the first suit**") in this Hon'ble Court along with Interim Application (L) No. 2055 of 2021 against the Defendants and one ZeeLab Generic Pharmacy, impugning the Defendants' use of the trade mark "GLYNET" ("**the first impugned mark**") and its variants.

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4. The first suit came to be disposed of by an Order dated 11th March 2021 in light of the statement made by the Defendants that they would forthwith cease using "GLYNET" and its variants and would also withdraw the applications filed for registration of the mark "GLYNET". The Order dated 11th March 2021 reads thus:

> *"1. The Defendants have given written instructions to Ms. Pandya. The Defendants confirmed that they will stop using the rival marks in the GLYNET series whether with or without any suffixes or prefixes. The cessation of the Defendant's use of this mark/series of marks is to operate immediately.*
> *2. The Defendants state that they will withdraw their application for registration of the GLYNET/GLIMET series of marks within three weeks from today. If the Defendants fail to make the necessary application before the Registrar of Trade Marks, Delhi, the Registrar is directed to list the application before him, take it up and proceed to dismiss or reject it on the basis of this order. The Registrar will act on production of an authenticated copy of this order.*
> *3. There is apparently a stock of goods with the rival marks already in the market. A statement of the quantities, including the batch number and the dates, will be provided to the Advocates for the Plaintiffs. By consent, the Defendants are afforded 90 days within which to dispose of the existing stock. Any stock not disposed of by that date, i.e. by 11th June 2021 will be forthwith taken to destruction or may be used without the presently impugned packaging, marks and labels.*
> *4. In view of this, Mr. Jamsandekar accordingly does not press the prayer for damages. The statements made by the Defendants are accepted as undertakings to the Court."*

From the above it is clear that the Defendants had specifically undertaken that they would (i) stop using the impugned mark "GLYNET", (ii) withdraw their applications for registration of the mark "GLYNET" or any series of marks

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containing "GLYNET", and (iii) dispose of the existing stock of "GLYNET" within ninety days, i.e., on or before 11th June 2021, after which such stock would be destroyed by the Defendants. The first suit was thus decreed on the basis of these undertakings given by the Defendants, and hence the Plaintiffs did not press their claim for damages.

5. However, despite the aforesaid Order dated 11th March 2021 and the undertakings given to this Court, the Plaintiffs discovered that despite such undertakings, the Defendants were not only continuing to manufacture and sell "GLYNET" but were also using a deceptively similar mark, "GLYZET" ("**the second impugned mark**"), to manufacture a virtually identical pharmaceutical product as sold under the first impugned mark "GLYNET".

6. Hence the present Suit.

Submissions on behalf of the Plaintiffs:

7. Mr. Kamod, learned counsel appearing on behalf of the Plaintiffs, submitted that in or about the first week of July 2021, i.e., after the period of 90 days was over, the Plaintiffs visited the website of Defendant No. 1, i.e., www.zeelabpharmacy.com, and searched for "GLYNET" only to discover that the Defendants were offering for sale pharmaceutical products under the second impugned mark i.e. "GLYZET" and its variants, which were deceptively similar to the Plaintiffs' "GLIMET" trade marks as also to the first impugned mark, i.e., "GLYNET".

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8. The Plaintiffs, on 5th July 2021, placed an order online for products bearing the marks "GLYZET-1" and "GLYZET-M1 SR FORTE" and were shocked to receive products bearing "GLYNET-1" and "GLYNET-M1 SR FORTE" marks, which the Defendants had undertaken not to manufacture after 11th March 2021 and sell beyond a period of 90 days from the Order dated 11th March 2021.

9. Mr. Kamod submitted that the Plaintiffs, once again, on 28th July 2021, placed an order online on the Defendants' website for products bearing the second impugned mark i.e. "GLYZET", however, yet again, the products delivered to the Plaintiffs under the invoice dated 28th July 2021 bore the trade mark "GLYNET". He pointed out that, while the said invoice issued by Defendant No. 2 described the products as "GLYZET-2 / GLYZET-PM2", the products actually delivered prominently displayed the marks "GLYNET-2 / GLYNET-PM2". He submitted that what was even more shocking was the fact that the manufacturing date stamped on the product delivered was May 2021.

10. Basis the above, Mr. Kamod submitted that it was clear that the Defendants had acted in breach and complete disregard of the Order dated 11th March 2021 and had not only continued to sell "GLYNET" beyond the 90-day period but had also with impunity continued to manufacture medicinal products carrying the mark "GLYNET" i.e. the first impugned mark. He also pointed out that the Defendants had failed to withdraw their application for registration of the mark "GLYNET", despite the undertaking, as recorded in the Order dated 11th March 2021.

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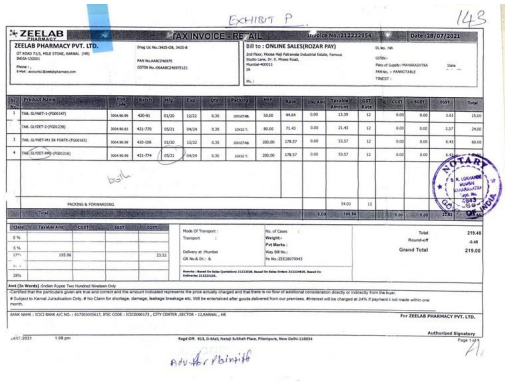
11. Mr Kamod then submitted that the Plaintiffs' mark, i.e., "GLIMET", and the second impugned mark i.e. "GLYZET", were not only deceptively similar to each other but also fell within the same class and were for the same use. He thus submitted that the use of the second impugned mark would certainly cause confusion and deception among consumers.

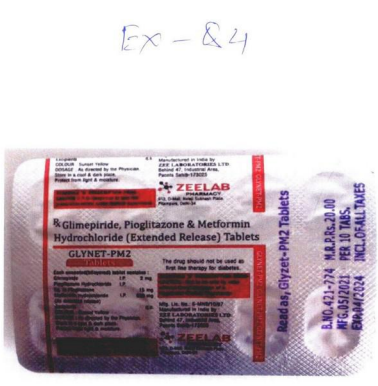
12. Mr. Kamod then pointed out that the Defendants, in adopting the second impugned mark, i.e. "GLYZET", had only made minor changes and variations to the Plaintiffs' registered trade mark "GLIMET". He pointed out that these minor variations did not in any manner render the second impugned mark distinct from the Plaintiffs' mark and also from the first impugned mark. He submitted that what the Defendants had mischievously done was to merely replace the letters "I" and "M" in the Plaintiffs' registered trade mark "GLIMET" with the letters "Y" and "Z", thereby retaining the same overall structure and preserving the visual and phonetic similarity of the Plaintiffs' registered trade mark, i.e., "GLIMET". He submitted that the Defendants had, by adopting the second impugned mark, effectively set to naught the undertaking given by them as recorded in the Order dated 11th March 2021 since the second impugned mark was deceptively similar to the first impugned mark.

13. Mr. Kamod submitted that Defendant Nos. 1, 2 and 4 had also made blatantly false statements on oath. In support of his contention, he pointed out that the Defendants had, in the Affidavit in Reply, *inter alia,* stated that they had, pursuant to the order dated 11th March 2021, (i) ceased using the mark

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"GLYNET" (in paragraph 31[1] of the Affidavit in Reply) and (ii) the products relied upon by the Plaintiffs in their Interim Application were manufactured in May 2021, i.e., prior to the said order (in paragraph 50[2] of the Affidavit in Reply). He submitted that these statements were demonstrably false, as was evident from a perusal of Exhibits P and Q-4 of the Interim Application, which clearly disclosed that the Defendants had not only continued to sell "GLYNET" but also manufactured the same in complete violation and breach of the Order dated 11th March 2021. The Exhibits P and Q-4 of the Interim Application are reproduced as follows:





14. Mr. Kamod then took pains to point out the Defendant's failure to offer any explanation, either in their pleadings or oral arguments, as to how products bearing the impugned mark "GLYNET" continued to be manufactured and sold after the order dated 11th March 2021. He accordingly submitted that this Hon'ble Court ought to direct that the procedure under Section 379 of the Bharatiya Nagarik Suraksha Sanhita, 2023, be adopted against the Defendants, in view of the fact that the Defendants on oath in the Affidavit in Reply made

1 *"31. Pursuant to the Order dated 11.03.2021, the Defendants ceased use of the mark 'GLYNET' and adopted the new trademark "GLYZET"...."*

2 *"50. ..... From a bare perusal of Exhibit Q-1 to Q-6 it is evident that date of manufacturing printed on said strips is May 2020 which is prior to Order dated 11.03.2021."*

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patently false statements by contending that (i) the Defendants had ceased use of the mark "GLYNET" pursuant to Order dated 11th March 2021 and (ii) the products at Exhibits Q-1 to Q-6 were manufactured in May 2020. Mr. Kamod submitted that it is clear from a bare perusal of Exhibit Q-4 that the Defendants had sold "GLYNET" after the ninety days of the order dated 11th March 2021 and from Exhibit Q-4 that the Defendants had also manufactured "GLYNET" after 11th March 2021. Mr. Kamod thus submitted that the Defendants have committed perjury and action under Section 379 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (**"BNSS"**), must be taken against the Defendants.

15. Mr. Kamod argued that the Defendants' contention that the product shown at Exhibit "Q-4" bears an endorsement stating *"Read as GLYZET-PM2"* was wholly misleading. He pointed out that such endorsement does not alter or negate the continued and prominent use of the impugned mark "GLYNET" on products manufactured in May 2021. He submitted that this endorsement was also a clear afterthought and nothing more than a shoddy attempt to fabricate an appearance of compliance while, in substance, continuing to manufacture and market pharmaceutical products under the impugned mark "GLYNET" in flagrant breach of the order dated 11th March 2021.

16. Mr. Kamod thus submitted that in view of the Defendants' egregious, contumacious and misleading conduct, the Plaintiffs were constrained to institute the present Suit. He further submitted that Defendant Nos. 1, 2 and 4 have entered an appearance through advocates and filed a joint Affidavit in Reply however, Defendant No. 3, despite being duly served and having a clear

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nexus with the other Defendants, had once again chosen not to enter an appearance or participate in the present proceedings.

17. Mr Kamod submitted that there could be no manner of doubt as to the similarity between the Plaintiffs' mark "GLIMENT", the second impugned mark "GLYZET", and also the similarity between both these marks and the first impugned mark "GLYNET". Mr. Kamod then submitted that it was well settled that a stricter approach should be adopted while applying the test to judge the possibility of confusion between rival medicinal products. He submitted that what the Defendants had once again done was nothing but another slavish imitation of the Plaintiffs' prior adopted and registered trade mark. He submitted that such adoption was not only dishonest but also *mala fide* and in utter defiance and disregard for the orders passed by this Court and the undertakings given by the Defendants to this Court as recorded in the Order dated 11th March 2021.

18. Mr. Kamod submitted that, although both the rival products were intended for the treatment of diabetes, their compositions were different, and that any confusion in the mind of a consumer could therefore have disastrous consequences. He submitted that, given the deceptive similarity between the marks, the fact that the packaging and get-up were different was wholly immaterial. He submitted that in such cases, the ultimate public interest lies in protecting the consumer against any unwary purchase of a deceptively similar product, more so when the consequences of such an unwitting purchase could be disastrous. He submitted that this was highly possible in our Country where

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medicines are sold over the phone and dispensed without a prescription stringent measures to prevent any confusion arising from the similarity of marks in respect of medical and medicinal products were required to be undertaken.

19. Mr Kamod then placed reliance upon the decisions in ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.***[3], ***Medley Laboratories Pvt. Ltd. v. Alkem Laboratories Ltd.***[4] and ***Wyeth Holdings Corporation v. Burnet Pharmaceuticals Pvt. Ltd.***[5], to point out that the Courts had consistently held that disputes involving medicinal products require a far stricter test of deceptive similarity than ordinary commercial goods, as public health considerations are paramount. He pointed out that in cases where even a mere likelihood or possibility of confusion could arise, particularly phonetic or structural, between rival drug names, the same was sufficient to warrant injunctive relief, without the need to prove actual deception. He submitted that where confusingly similar marks are used for drugs with different compositions or therapeutic effects, the potential for serious or even disastrous consequences mandates that Courts must take restraining measures and prevent such potential confusion and consequential use.

20. Mr. Kamod then submitted that the Defendants are habitual infringers who regularly adopt the modus operandi as they had in the first suit, i.e., to give an undertaking to the Court to stop using the offending trade mark and thereby avoid an order of costs, only to subsequently infringe another trade mark until

3 (2001) 5 SCC 73
4 2002 SCC Online Bom 444
5 2008 SCC Online Bom 76

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caught out. In support of his contention, he tendered a compilation of several orders passed by this Hon'ble Court in different actions for infringement and passing off instituted against the Defendants, in which the respective Plaintiffs had secured injunctions against the Defendants, and the Defendants had thereafter settled the matters in a manner identical to the first suit. He submitted that all these orders are available in the public domain and were accessible to the public at large. He pointed out that several such cases had also been filed against the Defendants before this Hon'ble Court, the details of which are set out as follows:

i. COM IP Suit (L) No.1595 of 2018 filed by Aristo Pharmaceuticals Pvt. Ltd against Zee Laboratories Ltd & Anr. The said Suit was disposed of by consent decree dated 21st December 2018.

ii. COM IP Suit (L) No. 631 of 2019 filed by Glenmark Pharmaceuticals Ltd against Zee Laboratories Ltd. The said Suit was disposed of by consent decree dated 26th June 2019.

iii. Interim Application (L) No.10839 of 2023 in COM IP Suit No.173 of 2023 filed by Kilitch Drugs (India) Limited against Zee Laboratories Limited and Zee Laboratories were injuncted vide Order 30th June 2023 from using the trade mark impugned therein.

iv. Interim Application (L) No.31968 of 2025 In COM IP Suit (L) No.31784 of 2025 filed by Procter and Gamble Health Limited against Zee Lab Pharmacy Pvt. Ltd and Zee Lab Pharmacy Pvt. Ltd. were

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injuncted vide Order dated 17th October 2025 from using the trade mark impugned therein.

21. Mr. Kamod then tendered another compilation from which he pointed out that the Defendants had also been debarred by various State Medical Health Corporations from supplying their products under different trade marks and brands on account of the serious quality concerns in respect of the products which the Defendants had produced. He submitted that an online search revealed that the products manufactured by Defendant No. 2, i.e., Zee Laboratories and/or its sister concern, had been found to be "Not of Standard Quality". He submitted that these orders were also available in the public domain and were therefore available to the public at large.

22. He then also placed reliance on a recent news article published in Economic Times Pharma dated 11th December 2025 (e-paper), titled ***"Indian drugmaker Zee Laboratories promises cheap alternatives—but there's a catch"***. Drawing attention to the contents of the said article, he submitted that it was reported, *inter alia*, that the products of Defendant No. 2 had failed at least 86 quality tests conducted by Indian regulators and that the company had faced multiple Court cases. He pointed out that the article further recorded that the medicines manufactured by Defendant No. 2 had also failed regulatory tests in Nigeria and the Philippines. He pointed out that the said article reported that ***"there is a very big problem with this company, and it deserves to be shut down and at least carefully investigated and looked into urgently, because it is obviously issuing and manufacturing bad quality medicines."***

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23. Mr. Kamod submitted that, having regard to the nature of the dispute, the conduct of the Defendants, and the fact that the matter concerns pharmaceutical products and public health, this is a fit and proper case for the imposition of exemplary costs. He emphasised that this is not a case where a bona fide defence has merely failed, but on the contrary, the record clearly demonstrates that the Defendants have continued to infringe the Plaintiffs' trade mark, despite having submitted to the order dated 11th March 2021 and in the teeth of the solemn undertaking given to this Court, on the basis of which the first suit was disposed of. He submitted that, in such circumstances, Section 35 of the Civil Procedure Code, 1908 (**"CPC"**), as amended by the Commercial Courts Act, 2015, mandates that the unsuccessful party must be visited with costs. In support of his contention, he placed reliance upon the decision in ***Bharat Infracement Ltd. & Ors v. Ultratech Cement Ltd. & Ors.***[6] wherein the Court held that in a commercial matter, the losing party must pay the costs, and costs must be awarded.

24. Mr. Kamod, then without prejudice to the above, further submitted that this Court also possesses ample inherent power under Section 151 of the CPC to impose exemplary costs. He submitted that there is nothing in the CPC, which limits or curtails the Court's inherent jurisdiction to pass such orders as may be necessary for the ends of justice, and that the powers under Section 151 are wide and unfettered. Given the Defendants' conduct, he submitted that this is a case where the Court ought to exercise its inherent jurisdiction, as meeting such conduct with only routine or nominal costs would reduce orders of this

6 2022 SCC Online Bom 6687

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Court to empty formalities and embolden litigants to treat compliance with Court orders as optional.

25. Mr. Kamod submitted that in the facts of the present case the Defendants have abused the process of this Court by first submitting to a decree in the earlier Suit on the basis of the undertaking given to the Court and thereafter continuing the very same infringing activities, including by purportedly changing the first impugned mark i.e. "GLYNET" to second impugned mark i.e. "GLYZET" while simultaneously continuing use of "GLYNET" itself. He submitted that the Defendants' conduct was gross and had also resulted in the wastage of scarce judicial time, and therefore warranted the imposition of exemplary costs, not only to do justice between the parties but also to uphold the majesty of law, particularly in commercial intellectual property matters involving pharmaceutical products, where public health considerations are paramount. In support of his contention, he placed reliance upon the decision of this Court in ***Shalina Laboratories Pvt. Ltd. and Anr. v. Twin Impex***[7].

26. Mr. Kamod then pointed out that the Affidavit in Reply filed by the Defendants contained patently false statements with regard to the manufacture and sale of "GLYNET". The Defendants' have thus shown a deliberate lack of candour and an attempt to mislead this Court. He then submitted that the Defendants, having misrepresented the truth, must face meaningful consequences not only by way of an injunction but also exemplary costs. In support of his contention, he placed reliance upon the decision in the case of ***Dashrath B. Rathod and Ors. v.***

7 [Bombay High Court] Order dt. 16th September 2018 in NM (L) No. 1989 of 2018 in COM IP (L) No. 1143 of 2018

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Fox Star Studios India Pvt. Ltd and Ors.[8] and ***Shoban Salim Thakur v. Chaitanya Arora & Anr.***[9]

27. He thus submitted that the Plaintiffs were entitled to relief in terms of prayer clause (a) of the Interim Application as well as an order for the payment of costs.

Submissions on behalf of the Defendants:

28. Mr. Patade at the outset submitted that the first suit was not decreed in terms of any of the prayer clauses contained in the first suit terms but was disposed of in terms of the statement made by the Defendants as specifically recorded in the Order dated 11th March 2021. He submitted that despite the passage of four years from the date on which the Plaintiffs had alleged breach of the Order dated 11th March 2021, the Plaintiffs had not filed any Contempt Petition or any Application under the provisions of Order XXXIX Rule 2A of the CPC against the Defendants.

29. Mr. Patade then pointed out that the Plaintiffs had instituted the present Commercial IP Suit on 20th August 2021, and that this Court had, vide an an Order dated 13th September 2021, granted ex-parte ad-interim relief to the Plaintiff after which the Defendants had out of respect and deference to the Order of this Court discontinued the use of the second impugned mark "GLYZET".

8 2017 SCC Online Bom 345

9 Interim Application (L) NO. 18278 OF 2025 In Commercial Suit (L) No. 18197 OF 2025.

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30. Mr. Patade then submitted that in the Affidavit in Reply, the Defendants had clearly set out that the second impugned mark, i.e., "GLYZET", was visually, structurally and phonetically distinct from the Plaintiffs' mark "GLIMET", and that the rival packaging was also entirely different, and hence there was no similarity between the second impugned mark and the Plaintiffs Mark. He submitted that the Defendants had honestly and in a bona fide manner conceived and coined the second impugned mark i.e. "GLYZET", wherein "GLY" denotes "Glimepiride", the active drug ingredient, and "ZET/ZEP" is derived from the Defendants' corporate name, "ZEM", as explained in paragraphs 43 and 45 of the Affidavit in the Reply. He submitted that there is thus no dishonest adoption or bad faith.

31. Mr. Patade, despite the fact that Exhibit Q-4 clearly had May 2021 as the manufacturing date, incredibly submitted that the manufacturing date printed on the said strips is May 2020, which is prior to the order dated 11th March 2021. He submitted that the said strips also bear the endorsement *"Read as GLYZET-PM2 Tablets"*, and therefore there was no intention on the part of the Defendants to act in breach of the Court's order.

32. Mr. Patade thus reiterated that there is no deceptive similarity between the second impugned mark i.e. "GLYZET" and the Plaintiff's mark "GLIMET", both marks being derived from the common molecule "Glimepiride", and that no trader can claim a monopoly over a mark derived from a common active drug. In support of his contention, he placed reliance on the decision of ***Schering Corporation Ltd. v. United Biotech Pvt. Ltd.***[10] and pointed out that the Court had

10 2010 SCC Online Bom 1528

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inter alia, held that NETMICIN and NETROMYCIN, which were both derived from Netilmicin, were not deceptively similar. He also placed reliance upon the decision of this Court in the case of ***Macleods Pharmaceuticals Ltd. v. Swisskem Healthcare***[11], which held that PANDERM and POLYDERM were not deceptively similar.

33. Mr. Patade further submitted that during the hearing, the Plaintiffs sought to rely upon two compilations of documents which were neither shared with the Defendants nor filed on oath. He submitted that the Defendants had no opportunity to deal with or rebut those documents and therefore prayed that this Hon'ble Court ought not to place any reliance upon such material while adjudicating the present Interim Application.

34. Mr. Patade then submitted that in the facts of the present case, given that the Defendants' adoption of the second impugned mark i.e. "GLYZET" was bona fide, the question of any injunction being granted did not arise, much less the question of the grant of costs. He then, on the aspect of costs, placed reliance upon the decision of this Court in ***Meher Distilleries Pvt. Ltd. v. S.G. Worldwide Inc.***[12], and pointed out that the Division Bench had set aside an order of costs imposed by the Learned Single Judge, *inter alia* holding that costs cannot be mechanically imposed in commercial matters without affording an opportunity to the affected party and without recording cogent reasons. He also placed reliance upon the decision of this Court in ***Ultratech Cement Ltd. v. Jai Shree Krishna Cement***[13], wherein it was held that while exercising jurisdiction under

11 2019 SCC OnLine Bom 1186
12 2021 SCC Online Bom 2233
13 2019 SCC Online Bom 3569

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Order XXXIX Rule 2-A of the CPC, the Court cannot invoke Section 35 of the CPC (as amended by the Commercial Courts Act) or Section 135 of the Trade Marks Act to impose costs or penalties, as the scope of Order XXXIX Rule 2-A is confined only to the consequences expressly provided therein.

35. He then also drew attention to the rulings in ***Cadila Healthcare***, ***Medley Laboratories***, ***Faber-Castell Aktiengesellschaft v. Pikpen (P) Ltd.***[14], ***Pidilite Industries Ltd. v. Raghunath Chemicals***[15], ***Shalina Laboratories***, ***Dashrath B. Rathod***, ***Bharat Infracement***, and ***Shoban Salim Thakur***, upon which reliance was placed by the Plaintiffs, were all wholly inapplicable to the facts of the present case, as the facts in each of those cases were materially different.

36. In conclusion, Mr. Patade submitted that there was no deceptive similarity between the rival marks, i.e., the second impugned mark "GLYZET" and the Plaintiff's mark "GLIMET", and that the Defendants had acted honestly in adopting the marks "GLYZET" and "GLYNET". He submitted that the conduct of the Defendants was bona fide, and thus no mala fides or dishonest conduct can be attributed to the Defendants. He thus submitted that the Plaintiffs had not made out any case for the grant of an interim injunction, much less an order of costs. He therefore submitted that the present Interim Application under Order XXXIX Rules 1 and 2 CPC deserves to be dismissed with costs.

Submissions in Rejoinder:

37. Mr. Kamod in rejoinder, submitted that each one of the defences taken by the Defendants was demonstrably false.

14 2015 SCC Online Bom 8762

15 [Bombay High Court] Order dt. 30th June 2023 in CP (L) No. 30589 of 2021 in Suit No. 729 of 2015

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38. He, first, reiterated that the Defendants in gross breach of the order dated 11th March 2021, had both manufactured and sold their products under the first impugned mark, i.e., "GLYNET", as was plainly evident from Exhibits P (invoice dated 28th July 2021) and Q-1 to Q-6 to the Interim Application. He also pointed out that the Defendants had not offered no plausible explanation whatsoever for adopting the second impugned mark "GLYZET" or, for that matter, even the first impugned mark "GLYNET". He submitted that it was clear that both the first impugned mark, "GLYNET", and the second impugned mark i.e. "GLYZET", were designed to slavishly mimic the Plaintiffs' prior mark and well-established mark, "GLIMET". The reasons he submitted were obvious.

39. He then submitted that the Defendants were fully aware, or at the very least ought to have been aware, of the Plaintiffs' prior proprietary rights, registrations and extensive use of the "GLIMET" trade marks despite which the Defendants had chosen to adopt the marks "GLYNET" and "GLYZET".

40. He then also, and crucially, submitted that, despite the undertakings given by the Defendants to cease use of "GLYNET", the Defendants had adopted a deceptively similar mark, "GLYZET", while simultaneously continuing to manufacture and sell "GLYNET". He placed reliance upon the decisions in ***Pidilite Industries Ltd.*** and ***Faber-Castle Aktiengesellschalft*** to submit that minor cosmetic changes cannot be used to circumvent an existing injunction and that the Court need not readjudicate infringement actions for every superficial modification.

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41. On the aspect of deceptive similarity, Mr. Kamod reiterated that the marks "GLIMET", "GLYNET" and "GLYZET" were all structurally, visually and phonetically similar and were all used for identical pharmaceutical goods in Class 5. He submitted that it was therefore clear that this was likely to cause confusion, and thus the use of the second impugned mark i.e. "GLYZET" by the Defendants should be restrained.

42. Addressing the Defendants' objection that what was tendered to the Court by way of the two compilations was not filed on Affidavit, Mr. Kamod submitted that the said material are matters of public record and are relied upon not to prove disputed facts but to demonstrate antecedents, conduct and lack of bona fides, all of which are directly relevant to the balance of convenience and grant of injunctive relief.

43. He further distinguished the judgement relied upon by the Defendants, including ***Macleods Pharmaceuticals***, ***Meher Distilleries***, ***Schering Corporation*** and ***Ultratech Cement v. Jai Shree Krishna Cement***, and submitted that none of them assist the Defendants on facts or law.

44. Mr. Kamod thus submitted that the defences put forth by the Defendants were not only unsustainable but also plainly dishonest. He submitted that continued use of the second impugned mark i.e. "GLYZET" by the Defendants or through their agents poses a serious risk to public health and that the Plaintiffs had thus made out an overwhelming case for interim relief. He submitted that the Interim Application therefore must be made absolute with exemplary costs.

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Reasons and Conclusions

45. After having heard Learned Counsel for the parties and having perused the record and compared the rival marks, I have no hesitation in holding that the Plaintiffs have not only made out a compelling case for the grant of interim relief but also that the conduct of the Defendants is such that it disentitles the Defendants to any equitable consideration and must be met with an order of costs under the provisions of CPC as amended by Commercial Courts Act, 2015. I say so for the following reasons:

A. There is no dispute as to the fact that (i) the Plaintiffs are the registered proprietors of the trade marks "GLIMET" and "GLIMET DS" in Class 5 in respect of pharmaceutical and medicinal preparations, of which fact the Defendants are well aware given the litigation history between the parties; (ii) the Defendants had given an undertaking to this Court, as recorded in the Order dated 11th March 2021, that they would immediately cease use of the mark "GLYNET" with or without any prefixes or suffixes and, after ninety days, destroy all existing stock of "GLYNET"; and (iii) the second impugned mark i.e. "GLYZET", is also used in respect of pharmaceutical products falling in the same class and intended for identical therapeutic use as that of the Plaintiffs, namely the treatment of diabetes;

B. The Defendants' justification for adopting the second impugned mark i.e. "GLYZET" is patently dishonest, as is evident from the explanation advanced by the Defendants themselves. The Defendants seek to justify the adoption of **"GLYZET"** by contending that **"GLY"** is derived from

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"**Glimepiride**", the active pharmaceutical ingredient, and that **"ZET/ZEP"** is derived from the Defendants' corporate name **"ZEM"**. This explanation is ex facie untenable since an amalgamation of **"GLY"** and the Defendants' corporate name **"ZEM"** would result in **"GLYZEM"**, and not **"GLYZET"**. It also cannot be lost sight of that the Plaintiffs' mark **"GLIMET"** is an invented and inherently distinctive mark The Defendants' explanation is therefore not only clearly inconsistent with the Defendants' own case, but is plainly contrived, and wholly untenable.

C. It is clear beyond doubt that the adoption of the second impugned mark i.e. "GLYZET" was a calculated attempt to defeat the order dated 11th March 2021, which recorded the solemn undertaking given by the Defendants to this Hon'ble Court that they would immediately cease using the mark "GLYNET". The Defendants, instead of complying with the said order, have adopted a mark that is deceptively similar to "GLYNET" and sought to achieve indirectly what they were prohibited from doing directly. This is independent from the fact that the second impugned mark is also deceptively similar to the Plaintiff's mark "GLIMET" for the reasons noted hereinafter. In these circumstances, the Defendants' adoption of a trade mark with an almost identical structure and phonetic similarity cannot, by any stretch, be characterised as coincidental, particularly in the factual matrix of the present case.

D. The principles governing the determination of deceptive similarity are well settled. The rival marks must be compared as a whole, from the

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standpoint of an average consumer with imperfect recollection. The Court is required to consider the overall structural, visual, and phonetic similarity rather than undertake a microscopic or side-by-side comparison of the rival marks, as held in ***Pidilite Industries Ltd. v. Raghunath Chemicals*** and ***Faber-Castle Aktiengesellschalft***. When viewed in this context, the rival marks "GLIMET" and "GLYZET" leave no manner of doubt that the second impugned mark, i.e., "**GLYZET**", is deceptively similar to the Plaintiffs' mark, i.e., "**GLIMET**". Both are six-letter words, commencing with the identical prefix "**GL**" and ending with the identical suffix "**ET**", and the substitution of the letters "**IM**" with "**YZ**" in the second impugned mark, i.e., "**GLYZET**", is a minor and superficial variation that does not materially alter the overall impression of the Plaintiffs' mark, i.e., **"GLIMET"**.

E. Furthermore, and *crucially*, the overall structure and phonetic similarity of both marks are strikingly similar. Phonetically, **"GLIMET"** and **"GLYZET"** are likely to be pronounced similarly because **"GLI"** and **"GLY"** have the same phonetic structure. Such phonetic similarity assumes greater importance, particularly given the varying regional accents in our country coupled with the fact that it is commonplace that in India medicines are asked for orally and sold even over the phone. Additionally, even visually and structurally, both the marks convey a near-identical impression, which would in all likelihood cause confusion if not outright deception to a consumer of imperfect recollection. Hence, in my view, the decisions in

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Cadila Health Care Ltd. and ***Wyeth Holdings Corporation*** upon which reliance was placed by the Defendants would have no application in the facts of the present case.

F. It is well settled that in cases involving medicinal and pharmaceutical products, a far stricter test of deceptive similarity must be applied. Public health considerations override all other factors. Even a reasonable possibility of confusion or deception is sufficient to warrant injunctive relief. It is also well established that differences in packaging, get-up, colour scheme, or the fact that drugs may be sold on a prescription do not eliminate the likelihood of confusion. The fact that both "GLIMET" and "GLYZET" treat diabetes but have different compositions heightens the risk of the potentially serious, if not disastrous consequences for an unsuspecting consumer. Hence, the Plaintiffs' reliance in the cases of ***Cadila Health Care Ltd.*** and ***Shalina Laboratories Pvt. Ltd.*** is entirely apposite.

G. The Defendants' have not only pleaded a patently false and untenable defence but, in doing so, have clearly perjured themselves. This is beyond the pale of doubt since, in the Affidavit in Reply, the Defendants have stated that they have not manufactured products using the first impugned mark "GLYNET" after the order dated 11th March 2021 (paragraph 31 of the Affidavit in Reply). However, a perusal of Exhibits P and Q-4 annexed to the Interim Application makes it as clear as daylight that both these statements made on oath are false.

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H. Given the above, it is clear that the Defendants have no compunction in breaching undertakings given to this Court and making false statements on oath. There is a catena of decisions which hold that a party who comes to Court must do so with clean hands, and if a party is found to have based its case on a falsehood/s, then such party must be shown the door. In my view this principle would also equally apply to a Defendant whose conduct is such that it sullies the process of law and undermines the authority and dignity of this Court. The Defendants have done exactly this and in the most brazen manner. The Defendant must therefore be shown the door.

I. As already noted in 'G.' above, it is evident that the Defendants have breached the undertakings given to this Court as recorded in the Order dated 11th March 2021 and have also made false statements on oath. Such conduct squarely amounts to the giving of false evidence within the meaning of Section 227 of the Bharatiya Nyay Sanhita, 2023 (**"BNS"**). In terms of Section 215 of the BNSS, which governs the prosecution of, *inter alia,* offences against public justice, this Court is empowered to take cognizance of offences committed in relation to a judicial proceeding, subject to compliance with the procedure prescribed under Section 379 of the BNSS. In the present case, the Defendant Nos. 1, 2 and 4 have *ex facie* made false statements on oath. Accordingly, action in accordance with Section 379 of the BNSS is warranted.

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J. The Defendants' reliance upon endorsements such as "*read as GLYZET*" is plainly a subterfuge and does not affect the prominent and continued use of the mark "GLYNET" on the products, which were both clearly manufactured and sold in breach of the undertaking given to this Court as recorded in the order dated 11th March 2021. Such conduct, if viewed lightly or in the manner the Defendants seek, would encourage infringers like the Defendants to make superficial or cosmetic alterations to an offending mark and then compel the registered proprietor of the mark to repeatedly approach the Courts for re-adjudication of infringement and seek relief. Such conduct would amount to putting a premium on dishonesty and thus cannot in any manner be countenanced.

K. The present Suit is a Commercial Suit instituted under the provisions of the Commercial Courts Act, 2015. Section 35 of the CPC, as amended, mandates that costs must ordinarily follow the event and that the Court must have due regard to the conduct of the parties. The conduct of the Defendants is already noted in 'G.' and 'H.' hereinabove. This is not a case where a bona fide defence has merely failed but where the Defendants have made a patently false statement on oath and also, despite the undertakings given to this Court, resumed their infringing activities, thereby not only profiting by their wilful breach but also potentially imperilling the unsuspecting consumer. As held by the Hon'ble Supreme Court in ***Ramjas Foundation v. Union of India***[16], *the* Courts must guard themselves against unscrupulous litigants who pollute the stream of

16 2010 SCC OnLine SC 1254

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justice by resorting to falsehood, misstatements, or suppression of material facts. Though in the facts of ***Ramjas Foundation*** the observations were made in the context of a Plaintiff, in my view these observations would equally apply to a Defendant who has sullied the process of law and of this Court by breaching solemn undertakings given to the Court and has resorted to falsehood. This conduct of the Defendant has compelled the Plaintiffs to once again approach this Court and incur legal and other costs, not to mention resulted in a waste of judicial time.

46. Hence, for the aforementioned reasons, I pass the following Order:

ORDER

i. For the reasons set out in paragraphs 'A.' to 'J.', the Interim Application is allowed in terms of prayer clause (a) as reproduced above.

ii. Given that the Defendants have *ex facie* made false statements on oath, the Registry is directed to take appropriate steps in accordance with Section 379 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

iii. The Defendants shall, for the reasons set out in paragraph 'K.' above, jointly and/or severally pay the Plaintiffs costs of Rs. 50,00,000/– (Rupees Fifty Lakhs only) within a period of 12 weeks from today.

iv. In the event costs are not paid within twelve weeks, interest at the rate of 12% per annum shall apply.

[ARIF S. DOCTOR, J.]

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After pronouncement:

47. At this stage, Mr. Patade has sought a stay to this Order, hence there has to be a stay to this Order for a period of four weeks from today.

[ARIF S. DOCTOR, J.]