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

\# **CNR No. DLHC010138222026**

\+ CM(M)-IPD 17/2026 and CM 77/2026

M/S DINDAYAL INDUSTRIES LTD .....Petitioner

Through: Ms. Rajeshwari H., Sr. Adv. with Ms. Nupur Goswami and Ms. Meghna Gahlot, Advs.

versus

M/S DINDAYAL AYURVED BHAWAN & ANR.

.....Respondents

Through: Mr. Suhail Sehgal and Mr. Lakshay Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% 09.10.2026

1. Heard Ms. Rajeshwari H., learned senior counsel appearing for the petitioner assisted by Ms. Nupur Goswami, Advocate.

2. The instant petition has been filed under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 (CPC) against the impugned order dated 14.03.2026 passed by the learned District Judge (Commercial Court)-03, South-East, Saket Courts, Delhi in CS(COMM) No. 544/2021.

3. The learned senior counsel contends that the impugned order dated 14.03.2026 is illegal and improper inasmuch as Issue No. 2 has incorrectly

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recorded the infringement aspect instead of passing off. It is also argued that Issue No. 10 cannot be proved by the parties as the opposition to the trademark application (specifically Trademark Application No. 2885787 in Class 05) cannot be taken up in the present civil suit. It is further contended by the counsel that Issue No. 12 should not cast any negative burden on the plaintiff to prove whether there is no any ocular similarity between the packaging of the defendant and the plaintiff. It is contended that it is the plaintiff's case that there is no ocular similarity. It is thus submitted that there is requirement of framing of such issue which has not arisen for adjudication and has no bearing on the relief prayed by the plaintiff.

4. The submissions are strongly opposed by the learned counsel appearing for the defendant. He contends that the first witness of the plaintiff is under cross-examination. It is also contended that bearing in mind the limited scope under Article 227 of the Constitution of India, no interference is called for.

5. I have considered the submissions made by learned counsel appearing for the parties and have perused the record.

6. With respect to Issue No. 10, the submissions made by learned counsel appearing for the petitioner seem to be correct. The issue regarding the opposition of the trademark application cannot be taken up in the civil suit. The challenge to the trademark application has already been made in separate proceedings which are pending before the concerned Trade Marks Registry.

7. In view of the aforesaid, Issue No. 10 does not require to be framed and proved. Accordingly, the same stands deleted.

8. With respect to Issue No. 3, the objection was raised by the plaintiff

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that instead of the word "infringement" it should have been "passing off". The said submission has been rejected by the concerned Court on the ground that the issue with respect to passing off has already been framed as Issue No. 12.

9. The Court finds that the manner in which Issue No. 12 has been framed is also under challenge and, therefore, the objection *qua* Issue No. 3 will have to be considered along with objection *qua* Issue No. 12. Issue Nos. 3 and 12 are extracted as under:

> *"3. Whether the use of the trademark 'Dindayal' by the defendants amounts to infringement of the plaintiff's trademark? OPP"*
>
> *"12. Is there any ocular similarity between the packaging of the plaintiff and the defendant to give rise to any claim of passing off? OPP"*

10. With respect to Issue No. 12, the Court has rendered the following findings:

> *"22. Contention of the plaintiff is that it has never pleaded ocular similarity between the packaging of the plaintiff and the defendant.' It is submitted that the case of the plaintiff is that defendant has been selling and passing off their products as plaintiff's by spreading rumors that plaintiff has changed the colour scheme and trade dress of their products. Ld. counsel for defendant has argued that plaintiff has specifically pleaded 'deceptive resemblance' and 'confusion among general public'.*
>
> *23. It is noted that in para 25 of the plaint, plaintiff has pleaded that the trademark of the defendant was phonetically, structurally and conceptually identical to plaintiff's trademark. It has also been submitted that even the Trademark Registry confirmed the similarity between the rival marks. In para 39 of the plaint, plaintiff has averred that Ayurvedic goods sold by the defendant under the mark DINDAYAL which are deceptively similar to plaintiff's registered mark. It is also noted that logo is also a vital component of the packaging. However, it would be apt to modify issue no.12 as follows:*
>
> ***"Whether there is any ocular similarity between the packaging***

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and/or marks of the defendant and plaintiff to give rise to the claim of passing off? OPP"

Issue No. 13

"13. Are the plaintiff and the defendant manufacturing the similar medicines and the extent thereof? OPP"

11. Issue No. 12 by the impugned order has been modified as under:

> *"12. Whether there is any ocular similarity between the packaging and/or mark of the defendant and plaintiff to give rise to the claim of passing off? OPP"*

12. The contention of the petitioner that an inquiry into passing off cannot be restricted to a narrow ocular comparison of packaging finds firm support in established legal principles. It is well-settled through landmark judgments, including ***Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.***[1] and ***Parle Products (P) Ltd. v. J.P. and Co.***[2], wherein the Supreme Court held that actions for passing off extend to broader deceptive resemblances, structural similarities, and potential misrepresentations to the general public, rather than being confined solely to visual packaging tests.

13. Consequently, keeping these binding precedents in view, Issue No. 12 cannot be kept restricted to narrow ocular similarities, but must necessarily encompass the broader evaluation of deceptive resemblances and misrepresentations between the rival goods and marks. Issue No. 12 is, therefore, further modified to the following extent:

> *"12. Whether for any reason of ocular similarity or misrepresentation between the goods and marks of the defendant and plaintiff is giving rise to the claim of passing off?"*

14. With this clarification, the petition stands disposed of.

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[1] ***2001 (5) SCC 73***
[2] ***1972 (1) SCC 618***

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15. All rights and contentions are left open.

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 9, 2026/P/A

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