2026:DHC:6947-DB

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

% Judgment Reserved on*: 28.07.2026*
Judgment delivered on*: 20.08.2026*
Judgment uploaded on*: 20.08.2026*

\# **CNR No: DLHC010264262026**

\+ **FAO(OS) (COMM) 167/2026 CM APPL. 43226/2026**

NUGENESYS PHARMACEUTICALS PVT. LTD. AND ANR. ..... Appellants

versus

CELAGENEX RESEARCH (INDIA) PVT. LTD. .....Respondent

Advocates who appeared in this case

For the Appellants : Mr. Amar Shankar, Adv.

For the Respondent : Mr. Sachin Gupta, Mr. Rajat Jain, Mr. Rohit Pradhan, Mr. Prashansa and Ms. Mahima, Advs.

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

JUDGMENT

MANMEET PRITAM SINGH ARORA, J.

1. This is an appeal under Section 13(1A) of the Commercial Courts Act, 2015 [‘Act of 2015’], read with Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 [‘CPC’], assailing the ex-parte order dated 20.05.2026 [‘impugned order’] passed by the learned Single Judge in CS(COMM)

535/2026.

2. The present appeal pertains to a dispute inter-se two pharmaceutical companies, Nugenesys Pharmaceuticals Pvt. Ltd./Appellant No. 1 and Celagenex Research (India) Pvt./Respondent, both engaged in the business of selling nutraceutical products.

FACTUAL MATRIX

3. Appellant No. 2/Mr. Shoyeb Abdul Gafoor Mandlekar joined the Respondent Ltd. on 09.10.2019 as Founding Director, Vice President and Chief Financial Officer, holding 99% of the founding shareholding.

4. The Respondent manufactures and sells its nutraceutical product under the registered trademark 'NUREWIRE' bearing trademark no. 4525594 in Class 5, which was registered on 09.06.2020 ['Respondent's mark'].

5. It is stated that Appellant No. 2 personally signed the power of attorney for the 'NUREWIRE' trademark application and built the company as a founding promoter before resigning on 09.10.2024 after five years of service.

6. Following the resignation of Appellant No. 2, Appellant No. 1 was incorporated on 12.12.2024 [initially as Taibachem Healthcare Private Limited] and was subsequently renamed Nugenesys Pharmaceuticals Pvt. Ltd. on 30.12.2025. The Appellants thereafter applied for registration of the trademark 'RewireX' ['impugned mark'] bearing trademark no. 6892520 in Class 5 on 06.03.2025, pursuant to which products bearing the said mark were commercially launched in March 2026.

7. It is stated that, upon learning of the Appellants' launch of products

bearing the impugned mark in May, 2026, the Respondent instituted the underlying suit. However, it is a matter of record that the Respondent sent a cease-and-desist notice dated 29.10.2025 [‘Notice dated 29.10.2025’] to the Appellants, calling upon the Appellants to discontinue the use of the impugned mark. Thereafter, the Respondent also filed an objection dated 27.01.2026 to the said trademark application no. 6892520 before the Registrar of Trade Marks [‘Objections dated 27.01.2026’]. The existence of the said Notice and Objections was not disclosed or pleaded in the plaint by the Respondent in the underlying suit.

8. The learned Single Judge, *vide* the impugned order, granted an ex-parte ad-interim injunction and appointed a Local Commissioner on the ground that the manner in which the Appellants had adopted the impugned mark ‘RewireX’ did not inspire confidence.

9. In these facts, the Appellants have instituted the present appeal.

SUBMISSIONS BY THE APPELLANTS

10. Mr. Amar Shankar, learned counsel for the Appellants, stated that in the facts of this case, no ex-parte ad-interim order ought to have been passed by the learned Single Judge, and a notice for hearing ought to have been issued to the Appellants before granting an interim injunction.

10.1. He stated that Respondent was aware of the adoption of the impugned mark by the Appellants at least since 29.10.2025, when it issued the Notice dated 29.10.2025. He stated that the narrative in the plaint that the Respondent learnt about Appellants’ adoption of the impugned mark in May, 2026 is false and was intended to create a false sense of urgency to persuade the learned

Single Judge to pass an ex-parte ad-interim order, as well as seek appointment of a Local Commissioner.

10.2. He stated that since the Respondent was aware of the adoption of the impugned mark by the Appellants since 29.10.2025, this was an ideal case where, if disclosed, the learned Single Judge would not have granted exemption to the Respondent from undergoing pre-litigation mediation as per the mandate of Section 12A of the Act of 2015 or granted an exemption from advance notice as per the practice directions.

10.3. He stated that as per the mandate of Order XXXIX Rule 3 CPC, the Court is required to record reasons for passing an ex-parte interim injunction order without giving notice to the opposite party.

He stated that the ex-parte impugned order was passed by the learned Single Judge in exercise of its jurisdiction under Order XXIII Rule 3 CPC; however, no reasons for passing an ex-parte order as required under the said provision for justifying issuance of the injunction, prior to service of notice on the Appellants herein, have been recorded in the said order. Further, as per the following Rule 3A, the returnable date has to be fixed within 30 days if the injunction has been granted ex-parte. However, in the facts of this case, though the injunction order was passed on 20.05.2026, the returnable date fixed by the Court was for 05.11.2026. He stated that therefore there have been procedural violations resulting in injustice to the Appellants herein.

10.4. He stated on the merits of the dispute, the active pharmaceutical ingredients ['API'] in the rival products are distinct. He relied upon a comparison chart derived from the formulation published on the Respondent's product table. He stated that API is a relevant distinguishing fact, as it influences consumer selection of the product/supplement and should have been considered by the learned Single Judge while determining whether there was any likelihood of confusion. He stated that the products are therefore not identical.

10.5. He stated that the impugned order is contrary inasmuch as at paragraph no. 22, the learned Single Judge has expressly recorded that the trade dress of the rival products is not deceptively similar and yet the learned Single Judge has granted an interim injunction as per paragraph no. 27(i) of the order.

10.6. He stated that Respondent, along with the plaint, has relied upon a letter of appointment dated 05.11.2019, which is expressly disputed by Appellant No. 2. He stated that the veracity of the document is denied. He stated that the purported signatures of Appellant No. 2 on the said letter are forged.

10.7. He stated that the reliance placed by the learned Single Judge on the judgment of **Nutrica Pusti Healthcare Pvt. Ltd. and Others v. Morepan Laboratories Ltd.**[1] is incorrect as the ratio of the said judgment is applicable to the conduct of an ex-employee, whereas Appellant No. 2 was never an employee of the Respondent. He stated that in the impugned order at paragraph no. 25, the learned Single Judge has noted that Appellant No. 2 is the erstwhile distributor, which is also wholly incorrect.

10.8. He stated that the Respondent has communicated the injunction order to all the retailers and distributors of the Appellants, causing it reputational harm and affecting its business relationship with its supply chain.

[1] 2021 SCC OnLine Del 2631

10.9. He sought express liberty to withdraw the averments made at paragraph no. 13 of the appeal and prayer clause (iv) of the appeal. He stated that the said legal submissions were made by the Appellants under mistaken legal advice.

SUBMISSIONS BY THE RESPONDENT

11. In reply, Mr. Sachin Gupta, learned counsel for the Respondent, stated that the omission to plead the Notice dated 29.10.2025 in the plaint was an oversight by the Respondent. He stated that the Respondent did not consider the said Notice to be a material document and therefore did not apprise its counsel of this fact at the time of drafting the plaint. He relied upon the order pronounced by this Bench in **Jagdish Dahyalal Patel v. Anchor Consumer Products Private Limited**[2] to contend that non-disclosure should not result in vacation of the impugned order.

11.1. He stated, however, that the Appellants did not reply to the Notice dated 29.10.2025. He stated that the said Notice was issued after learning about the trademark application no. 6892520 filed by the Appellants for the impugned mark. He stated that the Notice called upon the Appellants to withdraw the said application. He stated that the said Notice does not record any knowledge of actual use of the mark by the Appellants on their goods or services. He stated that Appellants, as per their pleadings, commenced use of the impugned mark on their products in March 2026 and the Respondent learnt about the use of the mark in May 2026, and it immediately approached the Court.

11.2. He stated that the Respondent's mark 'NUREWIRE' is a registered

[2] 2026:DHC:5852-DB

mark and the Appellants adoption of the impugned mark 'RewireX' is an infringement of the said mark. He relied upon the findings recorded by the learned Single Judge at paragraph nos. 23 and 24 of the impugned order. He stated that considering the identical products, trademark and trade channel, there would be a likelihood of confusion amongst the consumers.

11.3. He also stated that in case the Appellants agree to discontinue the use of the impugned mark 'RewireX' as prayed at prayer clause (iv) of the appeal, the Respondent will be satisfied and the suit itself can be disposed of.

COURT'S FINDINGS

12. This Court has heard the learned counsel for the parties and perused the record.

13. The admitted facts show that Appellant No. 2 and the Respondent were known to each other due to the past transaction of sale and purchase of Appellant No. 2's shareholding in the Respondent.

14. The Respondent is the proprietor of the mark 'NUREWIRE', and it filed the underlying suit aggrieved by the Appellants' adoption and use of the impugned mark 'RewireX'.

15. The Appellants adopted the impugned mark 'RewireX' and applied for its registration on a proposed-to-be-used basis *vide* trademark application no. 6892520 dated 06.03.2025. The Respondent issued a Notice dated 29.10.2025 objecting to the said application. *Vide* the said Notice, the Respondent called upon the Appellants to withdraw their trademark application, furnish an undertaking that it would cease using the impugned mark, and respond within

seven days, failing which the Respondent reserved its right to initiate legal proceedings. The Respondent also expressed its willingness to resolve the matter amicably.

16. Thereafter, the Respondent also filed an objection dated 27.01.2026 to the said trademark application no. 6892520 before the Registrar of Trade Marks.

17. A perusal of the Notice dated 29.10.2025 establishes that the Respondent was aware of the Appellants' adoption of the impugned mark when it came across the trademark application no. 6892520 dated 06.03.2025, at least since October, 2025.

18. However, the plaint in the underlying suit fails to disclose the aforesaid facts pertaining to the issuance of the Notice dated 29.10.2025 and filing of the Objections dated 27.01.2026.

19. The issue arising for consideration is the legal consequence of the Respondent's suppression, in the plaint, of its Notice dated 29.10.2025 and its opposition application dated 27.01.2026 filed against the Appellant No. 1's trademark application no. 6892520 dated 06.03.2025, on the impugned order and the orders passed by the learned Single Judge in the connected applications.

20. The learned counsel for the Respondent conceded that not pleading the Notice dated 29.10.2025 in the plaint was an *oversight,* as recorded at paragraph no. 11 of the submissions hereinabove. He, however, contended that the said pleading is not relevant to the controversy as the Appellants commenced the *use* of the impugned mark for goods only in March, 2026. He

argued that the Respondent learnt about the presence of infringing goods in May 2026 and approached the Court by filing the underlying suit immediately thereafter. He thus contended that the issuance of Notice dated 29.10.2025 and filing of the Objections dated 27.01.2026 have no bearing on the cause of action in the underlying suit.

21. We are unable to accept the explanation of the Respondent for non-disclosure as bona fide. Also, we do not agree with the Respondent that the said facts were neither relevant nor had any bearing on the cause of action in the underlying suit.

22. The underlying suit is a commercial suit and is governed by the provisions and schedule of the Act of 2015. It is the statutory obligation cast upon every plaintiff in a commercial suit to verify the pleadings, by way of the prescribed Statement of Truth. Paragraph 4 of the Statement of Truth requires the plaintiff to declare that there is no concealment of any material fact, document or record. Paragraph 5 of the Statement of Truth requires the plaintiff to state that all documents in its power and possession have been disclosed and copies have been annexed with the plaint. Therefore, the requirement at paragraph nos. 4 and 5 is distinct.

23. In the plaint of the underlying suit at paragraph no. 17, the Respondent expressly pleads its knowledge of the Appellants' trademark application no. 6892520 dated 06.03.2025. The relevant paragraph reads as under:

> "17. That the Defendant No. 1 has filed trade mark application for the mark "RewireX" under the no. 6892520 dt. 06.03.2025, in Class 05 for goods namely, Medicinal and Pharmaceutical Preparation. <u>The Plaintiff reserves its right to oppose the said application upon publication thereof in the Trade Marks Journal.</u> The said application was filed prior to the

rebranding of Defendant No.1 as Nugenesys Pharmaceuticals Pvt. Ltd. on 30.12.2025, which fact establishes beyond any doubt that the adoption of the infringing mark and trade dress and the corporate rebranding exercise were premeditated, coordinated and part of a single unitary design."

[Emphasis Supplied]

24. It was obligatory, and apposite, for the Respondent to have further pleaded at paragraph no. 17 immediately thereafter, that it had issued a Notice dated 29.10.2025 to the Appellants, upon learning about the said application, and had thereafter filed its Objections dated 27.01.2026 to the said trademark application with the Registrar of Trademarks.

25. However, these material facts have not been pleaded at paragraph no. 17 of the plaint or at any other part of the plaint. To the contrary, the pleading at paragraph no. 17 gives an impression that the Respondent *proposes* to file an objection in future.

26. In our considered opinion, the issuance of the Notice dated 29.10.2025 and filing of the Objections dated 27.01.2026 were material facts which ought to have been disclosed in the plaint. The said facts showed the knowledge of the Respondent with respect to adoption of the impugned mark by the Appellants at least as on October, 2025, if not earlier.

27. This is relevant because in the plaint, the Respondent made an affirmative assertion that it has learnt about the impugned mark in May, 2026. The relevant extract of paragraph nos. 1 and 23 of the plaint reads as under: -

"1. ....

The Plaintiff in **first week of May, 2026** came to know that the

Defendants are selling identical product under the impugned mark "RewireX" which was not only under a deceptively similar mark, but also deceptively similar trade dress. ....

....

CAUSE OF ACTION

23. The cause of action in the present suit arose in the **first week of May 2026**, when the Plaintiff came to know that the Defendants were unlawfully selling an identical product under the impugned mark "RewireX", which is deceptively similar to the Plaintiffs registered mark and trade dress for NUREWIRE. The said cause of action is a continuing one and shall subsist until the further trading, manufacturing, distribution, and sale of the impugned products bearing the impugned mark and further usage thereof is restrained by this Hon'ble Court."

[Emphasis Supplied]

28. Moreover, as per the practice directions applicable on the Original Side of the High Court of Delhi, parties are required to file synopsis and list of dates with the plaint. Even the synopsis and list of dates, with the plaint of the underlying suit, make *no* mention of the Notice dated 29.10.2025 and the Objections dated 27.01.2026.

29. Instead, the synopsis, list of dates and pleadings in the plaint make assertions which give a distinct impression that the Respondent first learnt about the adoption and use of the impugned mark by the Appellants only in the first week of May, 2026.

30. In these admitted facts, having perused the averments in the plaint, this Court is of the considered opinion that there has been a *wilful suppression* by the Respondent of the Notice dated 29.10.2025 and the Objections dated 27.01.2026. These pleadings in the plaint, in our opinion, amount to

misleading the Court as regards the date of knowledge of the Respondent with respect to the adoption and use of the impugned mark by the Appellants.

31. Also, upon examination of the suit record, we find that with the plaint, in the index accompanying the documents, the Respondent filed documents at serial no. 2 under the heading "*Prosecution documents qua the Defendant's impugned mark RewireX under Application No. 6892520 dated 06.03.2025 in Class 5*".

Upon accessing the documents enlisted at serial no. 2, it is seen that the Respondent has filed a copy of the Appellants' trademark application no. 6892520, the Respondent's Objections dated 27.01.2026, to which the Notice dated 29.10.2025 is an annexure. However, the Respondent's Objections dated 27.01.2026 as well as the Notice dated 29.10.2025 are not separately enlisted in the index.

Thus, there is no disclosure of the Notice dated 29.10.2025 and Respondent's Objections dated 27.01.2026 in the plaint or in the index of the documents.

32. The tucked away Notice dated 29.10.2025 and the Objections dated 27.01.2026 under a bunch of documents at serial no. 2 of the index, with an obscure description, do not satisfy the test of making a disclosure as mandated by the Statement of Truth. As per the applicable Rules,[3] the plaintiff is required to file all documents accompanied by an index containing the details. However, as discussed above, neither the Notice nor the Objections find mention in the details. In fact, learned counsel for the Respondent has not even relied upon the said filing of documents as a disclosure and has fairly

[3] Rule 1(a) Chapter IV of Delhi High Court (Original Side) Rules, 2018

admitted that there was an *oversight* by the Respondent in not disclosing these facts in the plaint.

33. In the considered opinion of the Court, the conduct of the Respondent in wilfully suppressing the Notice dated 29.10.2025 and the Objections dated 27.01.2026, in the plaint, stands established beyond any doubt.

34. The said suppression has cast a shadow on the ex-parte ad-interim impugned order passed in its favour. The impugned order was passed by the learned Single Judge unaware of the issuance of the Notice dated 29.10.2025 and Objections dated 27.01.2026, thereby evidencing that discretion exercised by the learned Single Judge under Order XXXIX Rule 3 CPC in issuing the impugned injunction order without notice to the Appellants was certainly not free from undue influence caused by the acts and omissions of the Respondent.

35. The said omission to disclose the Notice dated 29.10.2025 and the Objections raised thereto appears to have been motivated by the Respondent's attempt to project to the learned Single Judge a recent and immediate cause of action arising only in May 2026, instead of in the year 2025. Such a pleading was intended to enable the Respondent to press for an ex-parte ad-interim injunction despite the settled position of law that, where the defendant has already commenced business prior to the institution of the suit, the Courts may consider issuing a notice for a short returnable date and afford the defendant a reasonable opportunity of being heard before considering the grant of an interim injunction. This position of law has been settled by a Co-

ordinate Bench of this Court in **Dabur India Limited v. Emami Limited**[4]. Even in **Wander Ltd. and Another v. Antox India P. Ltd.**[5], the Supreme Court held that the fact that a defendant has already commenced commerce would be a relevant consideration for the Court to weigh while adjudicating an interim injunction.

36. In fact, as per the practice directions applicable to the suits filed on the Original Side of the High Court, the plaintiff is mandatorily required to serve an advance copy of the paper-book on the defendant, even if no Caveat is lodged, so that both parties can be heard on the first date of listing and an appropriate order can be passed. In this case, the Respondent herein, by filing I.A. No. 14199/2026, sought exemption from advance service of the paper-book on the Appellants on the plea that the Respondent is seeking an ex-parte appointment of a Local Commissioner and the said relief will be frustrated if an advance service is effected. This safeguard was thus neutralised by the Respondent, without any reasonable basis. Also, we are of the considered opinion that if the Notice and Objections had been disclosed, it may have persuaded the learned Single Judge not to grant exemption from an advance service and give an opportunity to the Appellants to present their case as per the judgment of **Dabur India Limited v. Emami Limited** (supra).

37. We are conscious of the fact that in suits pertaining to counterfeit products or passing off, the Courts have the jurisdiction to grant ex-parte ad-interim reliefs and appoint Local Commissioners if the public interest is likely to be harmed and interim injunction cannot await issuance of notice to the

[4] 2023 SCC OnLine Del 5824 [Paragraph Nos. 11 and 14]
[5] 1990 SCC OnLine SC 490 [Paragraph No. 9]

defendant [**Re: Lakshmikant V. Patel v. Chetanbhai Shah and Another**[6]]. However, this decision/determination of appointment of Local Commissioner at an ex-parte stage has to be of the Court and the Court alone, to be determined on the basis of full disclosure made in the plaint. The exercise of this discretion should not be manipulated by creating a false sense of urgency and by withholding material facts. The significance of such disclosure becomes particularly evident in the context of Order XXXIX Rule 3 CPC, which mandates issuance of notice to the opposite party before granting an injunction, except where the Court is satisfied that the object of granting the injunction would be defeated by the delay in issuance of such notice. The plaintiff cannot withhold the relevant facts from the Court, so as to unduly influence the conscience of the Court as to whether it would prefer to issue a short notice to the defendant before granting an interim injunction or exercise its jurisdiction under Order XXXIX Rule 3 CPC to grant an ex-parte ad-interim injunction. In our considered opinion, the non-disclosures and pleading in the suit that the Appellants have commenced sales in May, 2026 have unduly influenced the Court's decision in passing the impugned order, and this is impermissible. If the Court had been made aware of the facts pertaining to the year 2025, it could have very well declined to exercise its discretion under Order XXXIX Rule 3 CPC and sought the presence of the Appellants before deciding the case. In this case, admittedly, the products of the Appellants were neither spurious nor sub-standard and therefore, issuance of a short notice would not have prejudiced the Respondent or the public.

In any event, while exercising the jurisdiction under Order XXXIX Rule 3 CPC, the learned Single Judge was required to disclose the reasons

[6] (2002) 3 SCC 65

which warranted dispensing with notice to the Appellant and proceeding ex-parte to grant an ad-interim order. However, a perusal of the impugned order shows no reason, and consequently, non-compliance with the procedure prescribed under Order XXXIX Rule 3 CPC has rendered the impugned order unsustainable.

38. The fact that the Respondent was aware of the adoption of the impugned mark by the Appellants at least since 29.10.2025 is also a relevant fact for deciding whether the Respondent has any good ground for seeking exemption from pre-mediation litigation mandated under Section 12A of the Act of 2015. In the facts of this case, where Appellant No. 2 and Respondent had a prior business transaction pertaining to share transfer in the Respondent and, as per the Respondent, the adoption of the impugned mark was in breach of the previous business transaction, this was a textbook case where the Respondent should have exercised the option of pre-institution mediation. The Respondent, despite being aware of the adoption of the impugned mark since the year 2025, elected not to avail the remedy of pre-institution mediation and instead sought an exemption from the learned Single Judge by filing I.A. No. 14197/2026. In our considered opinion, the Respondent has obtained the exemption by suppressing material facts. We are, however, not inclined to interfere with the exemption granted *vide* the impugned order considering the law settled by the Supreme Court in **Novenco Building and Industry A/S v. Xero Energy Engineering Solutions Private Ltd. and Another**[7], and the fact that no appeal is maintainable against the said application.

[7] 2025 SCC OnLine SC 2278

39. The root case, which first decided the grievances of suppression raised by a party [i.e., defendant] who has suffered an ex-parte interim order, was decided in the year 1916 in the seminal judgment by the King's Bench Division and in the Court of Appeal, titled **R v. Kensington Income Tax Commissioner**[8] [in short '**R v. Kensington**']. This judgment is the fountainhead of the principle of law followed by our Courts that a party who approaches the Court with unclean hands is not entitled to any discretionary relief. The said judgment has been summarized and quoted by the Division Bench of the High Court at Calcutta in **Barbara Taylor Bradford & Anr. v. Sahara Media Entertainment Ltd. & Ors.**[9], relevant paragraphs read as follows:

> "**209.** Although decided more than 80 years ago, and in England, this is still the root case in regard to grievances of suppression made by the party who has suffered an *ex parte ad interim* order. The case is reported in 1917 King's Bench Division at page 486; it was a decision of the Divisional Court affirmed by the Court of Appeal………
>
> ……….
>
> **213.** Be that as it may, the case contains several important propositions. The first of those propositions is, that obtaining an *ex parte* interim order on suppression is a very serious matter. The second point is, that if the Court was deceived or misled by it, the litigant who obtained the interim order, must suffer a dismissal of the motion. The third point is, that if such dismissal entails a loss of remedy, that cannot be helped. The fourth point is, that the power of dismissal for suppression is an inherent power of the Court. Some of the statements made by the illustrious Judges are reproduced below.
>
> **214.** At page 495 Viscount Reading Chief Justice of the Divisional and the High Court said as follows:—

[8] (1917) 1 KB 486 (DC & CA)
[9] 2003 SCC OnLine Cal 323

> "Where an *ex parte* application has been made to this Court for a rule nise of other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated then in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived".

215. Mr. Justice Low, also of the Divisional Court said as follows at page 498:

> "The statements made in the affidavit on which the rule nise was granted were very far from being honest and candid. That being so, it seems to me that this Court, having been exposed to an attempt to mislead and deceive it, has no alternative but to discharge the rule".

216. Lord Justice Cozens-Hardy, Master of the Rolls said as follows at page 505:—

> "……….the general proposition which I think has been established, that on an *ex parte* application *unerrima fides* is required, and unless that can be established, if there is anything like deception practised on the Court, the Court ought not to go into the merits of the case, but simply say we will not listen to your application because of what you have done."

217. Lord Justice Scrutton stated at page 513 in the beginning of the judgment that the Princess Edmond De Polignac was an American lady who had married a French subject. His Lordship went on to conclude at page 519 as follows:—

> "It may be that the result of our decision is that the applicant loses her remedy. If so, she has only herself and her legal adviser to thank for it."

218. The effect of this case, in the light of Order 39 Rule 4, is material in this regard. It is not necessary to set out the provisions as the Code is easily available.

219. Mr. Sen argued on the basis of the express words, that the code enjoins, that upon suppression being pointed out and established by the other side, the Court will merely vacate the interim order already obtained. Mr. Sen submitted that the Code does not go so far further as to say, that the application itself will be dismissed and no affidavits at all need be called for.

220. In our opinion, this point is very simply answered. As the case of the Princess demonstrates, the power to dismiss for deception or concealment practised upon the Court is an inherent power.

221. Section 151 of the Code expressly preserves the inherent powers of the Court. Such dicta in the case of the *Russian Princess* are in no manner affected by the words of Order 39 Rule 4, but if anything, further strengthened by the words of the Code.

222. We should not here be understood as laying down, that the Code does not enjoin a dismissal of the application altogether. It might well be so, on a true and complete construction of the Code. It is, however, not necessary for us to go so far, as the inherent power point is quite sufficient, for the purpose of letting the suppression practised by the plaintiff applicants, have its full effect."

[Emphasis Supplied]

40. In addition to the extracts from the judgment of **R. v. Kensington** (supra) quoted by the High Court at Calcutta, it would be relevant to reproduce the opinion in the Court of Appeal of Warrington L.J. at page 509, which reads as under:

"………It is perfectly well settled that a person who makes an ex parte application to the Court - that is to say, in the absence of the person who will be affected by that which the Court is asked to do - is under an obligation to the Court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by means of the order which has thus wrongly been obtained by him. That is perfectly plain and requires no authority to justify it………"

[Emphasis Supplied]

41. The judgment of the Court of Appeal in **R. v. Kensington** (supra) was

cited with approval by the Supreme Court in **Oswal Fats and Oils Limited v. Additional Commissioner (Administration), Bareilly Division, Bareilly and Others**[10], the relevant paragraphs read as under: -

> "**20.** It is settled law that a person who approaches the court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. **If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person.**
>
> **21.** In one of the earliest decisions on the subject i.e. *R.* v. *Kensington Income Tax Commr.* [(1917) 1 KB 486 (DC & CA)], Viscount Reading, Chief Justice of the Divisional Court observed: (KB pp. 495-96)
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> > "… Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, … the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit."
>
> **22.** The above-extracted observations were approved by the Court of Appeal in the following words: (*Kensington case* [(1917) 1 KB 486

[10] (2010) 4 SCC 728

(DC & CA)] KB p. 504)

> "… 'It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward.' [Ed.: As observed in Dalglish v. Jarvie, 2 Mac & G 231 : 42 ER 89 at p. 89.] … if an applicant does not act with uberrima fides and put every material fact before the Court it will not grant him an injunction, even though there might be facts upon which the injunction might be granted…."

His Lordship [Ed.: Lord Cozens-Hardy, M.R.] rightly pronounced: (Kensington case [(1917) 1 KB 486 (DC & CA)], KB p. 508)

"The Court, for its own protection, is entitled to say:

> 'We refuse this writ … without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us."

Warrington, L.J. was also of the same opinion. In a concurring judgment His Lordship observed: (Kensington case [(1917) 1 KB 486 (DC & CA)] KB p. 509)

> "… It is perfectly well settled that a person who makes an ex parte application to the Court—that is to say, in absence of the person who will be affected by that which the Court is asked to do—is under an obligation to the Court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by means of the order which has thus wrongly been obtained by him."

23. <u>This Court and different High Courts have repeatedly invoked and applied the rule that a person who does not disclose all material facts has no right to be heard on the merits of his grievance</u>………"

[Emphasis Supplied]

42. Similarly, the Supreme Court in **Amar Singh v. Union of India and**

Others[11], while discussing the absolute responsibility of the petitioner or plaintiff, who approaches the Court for seeking an injunction to make full disclosure of all facts, observed as under: -

> **"53.** Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with "unclean hands" and are not entitled to be heard on the merits of their case.
>
> **54.** In *Dalglish* v. *Jarvie* [(1850) 2 Mac & G 231 : 42 ER 89] the Court, speaking through Lord Langdale and Rolfe B., laid down: (Mac & G p. 231: ER p. 89)
>
> > "It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward."
>
> **55.** In *Castelli* v. *Cook* [(1849) 7 Hare 89 : 68 ER 36] Vice-Chancellor Wigram, formulated the same principles as follows: (Hare p. 94: ER p. 38)
>
> > "… a plaintiff applying ex parte comes (as it has been expressed) under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as he has broken faith with the Court, the injunction must go."
>
> **56.** In *Republic of Peru* v. *Dreyfus Bros. & Co.* [38 Ch D 348 : 55 LT 802] Kay, J. reminded us of the same position by holding: (LT p. 803)
>
> > "…If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith with the Court when ex parte applications are made."

[11] (2011) 7 SCC 69

57. In one of the most celebrated cases upholding this principle, in the Court of Appeal in *R.* v. *Kensington Income Tax Commr., ex p Princess de Polignac* [(1917) 1 K.B. 486 (CA)] K.B. Scrutton, L.J. formulated as under: (KB p. 514)

> "… and it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement."

58. It is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings and especially when it contains a prayer for injunction. A prayer for injunction, which is an equitable remedy, must be governed by the principles of "uberrima fides".

59. The aforesaid requirement of coming to court with clean hands has been repeatedly reiterated by this Court in a large number of cases."

[Emphasis Supplied]

The judgment of the Court of Appeal in **R. v. Kensington Income Tax Commissioner** (supra) was also cited with approval in the aforesaid judgment.

43. The law settled in the aforesaid judgments is that, in cases where suppression by the petitioner or plaintiff is established, not only should the ex-parte interim order be vacated but the interim application itself be dismissed. Given the proven conduct of the Respondent in withholding a material and relevant fact, we are of the considered opinion that the impugned ex-parte injunction order deserves to be vacated and the interim injunction

application dismissed. The Respondent cannot be granted the interim discretionary relief and is liable to suffer the consequences of approaching the Court with unclean hands.

44. Learned counsel for the Respondent has relied upon the judgment of this Court in **Jagdish Dahyalal Patel v. Anchor Consumer Products Private Limited** (supra). We find no merit in the reliance placed on the said judgment. In the facts of that case, there was no non-disclosure of documents by the plaintiff therein with respect to the documents exchanged with the defendant therein. The said judgment was authored by this Bench, and we are aware of the facts of this case, and there is no comparison between the two cases. There was no suppression by the plaintiff, in the said suit, of any document exchanged by it with the defendant therein. On the contrary, in the said case, this Court found that the defendant therein had approached the Registrar of Trademarks in a fresh application without disclosing the dismissal of an earlier application on the merits, which dismissal, in the opinion of the Court, made the second application non-maintainable.

Pattern of non-disclosure in at least three plaints by the filing counsel of the Respondent

45. There is another serious issue with respect to the pattern of conduct of the filing counsel of the Respondent in similarly suppressing issuance of prior notices and documents exchanged between the parties in the plaints, thereby resulting in false averments as to the date on which the cause of action first arose.

46. This Court has come across another judicial order wherein, in a suit, i.e., CS(COMM) 328/2022 filed by the same filing counsel, a learned Single

Judge *vide* judgment dated 22.11.2022[12] had similarly returned inculpatory findings of suppression and concealment in the plaint, leading to imposition of costs of Rs. 10,00,000/- on the plaintiff therein. The learned Single Judge observed that the ex-parte ad-interim order was secured by the plaintiff therein by suppressing material facts. However, the learned Single Judge refrained from vacating the interim order keeping in view the public interest involved in pharmaceutical products. The direction for imposition of costs was assailed by the plaintiff therein in FAO(OS)(COMM) 310/2022 and the said direction of costs was set aside on consent of the defendant therein *vide* order dated 28.10.2025. The parties arrived at a settlement leading to the setting aside of the imposition of the costs. The findings returned by the learned Single Judge in the said suit at paragraph nos. 26, 27, 28 and 47 on the issue of suppression are relevant.

This Court would have hoped that the filing counsel, who filed CS(COMM) 328/2022 would be cautious in future filings and ensure full disclosure; however, this has, unfortunately, not happened. Instead, the restraint shown by the learned Single Judge in not vacating the ex-parte ad-interim order secured by the plaintiff therein on the basis of the suppression, seems to have emboldened the filing counsel in continuing to file plaints, which suffer from the vice of suppression.

47. There is yet another order of another learned Single Judge in CS(COMM) 283/2023[13], where the plaint was filed by the same filing counsel and the interim injunction was denied by the learned Single Judge *vide*

[12] Sun Pharmaceutical Industries Ltd. v. DWD Pharmaceuticals Ltd., 2022 SCC OnLine Del 4015 [Paragraph Nos. 27 to 33]
[13] Sun Pharma Laboratories Ltd. v. Finecure Pharmaceuticals Ltd. & Ors., 2023 SCC OnLine Del 4932

judgment dated 16.08.2023 [at paragraph no. 63.3 of the said judgment] while holding that the plaintiff therein was guilty of suppressing the issuance of a cease-and-desist notice dated 16.09.2010 and the opposition filed to the defendant's application dated 28.10.2010. The said judgment was assailed in FAO(OS)(COMM) 200/2023, which was authored by this Bench, wherein the issue of suppression was examined, and the explanation offered by the plaintiff therein for the non-disclosure of the cease-and-desist notice was accepted.

48. We also cannot overlook the fact that the method of tucking away documents under a single heading in the index was adopted in the other suit CS(COMM) 283/2023. The plaintiff therein had not pleaded the notice dated 16.09.2010 in the plaint and had thereafter relied upon the fact that the notice, otherwise, forms part of the documents in the bundle accompanying the trade mark application. We can't help but observe with a sense of disapproval that the filing counsel for the Respondent is seeking to overreach the requirement of full disclosure of documents by tucking away documents in the procedural convenience of marking the documents 'COLLY'. The leniency shown by the Courts in FAO(OS)(COMM) 310/2022 and FAO(OS)(COMM) 200/2023 in refraining from penalising a party [plaintiff] or its counsel for not making full disclosures is being mocked at by the counsel for the Respondent herein, by devising means and methods to overreach the explicit requirement of law to make full disclosure of all facts and documents between the parties.

49. However, with the aforesaid knowledge, now that we examine the allegations of suppression by the Respondent of the Notice dated 29.10.2025 and Objections dated 27.01.2026 in this plaint, we can't help but note that

there seems to be a persistent pattern of suppression and non-disclosure followed by the same filing counsel in at least three suits filed on behalf of the plaintiff[s] represented by him, with an intent to secure ad-interim ex-parte orders and to misrepresent the date on which the cause of action to sue arose.

50. Since suits and appeals get decided by the Roster Benches presided over by different Judges, it is sometimes not possible for the concerned Bench to be aware of the pattern of conduct adopted by a counsel across the suits. The suits and appeals get decided in silos. However, when all the above orders in different suits are read together, (i) the judgment of the learned Single Judge dated 16.08.2023 in CS(COMM) 283/2023, (ii) the judgment dated 22.11.2022 by the learned Single Judge in CS(COMM) 328/2022, and (iii) the facts of the present case, a pattern of wilful suppression of the date on which the cause of action first arose becomes evident and egregious.

51. We are of the considered view that if we similarly overlook the suppression complained of in CS(COMM) 535/2026, in the present appeal, and persuade ourselves to uphold the impugned order on the reasoning set out at paragraph nos. 23 to 25, we will forever embolden the filing counsel for the Respondent to continue to file plaints which suffer from the vice of suppression and misrepresent the date of the cause of action. If this conduct is overlooked, it would be against all judicial canons. The counsel for the Respondent has literally bound down our hands to write this judgment to ensure that the impugned order stands vacated and the interim injunction application is dismissed, for the wilful non-disclosure of material facts and wrong pleading of the date on which the cause of action arose.

52. The conduct of the filing counsel for the Respondent reminds the Court

of the famous quote *"Once is happenstance. Twice is coincidence. Three times is enemy action"*[14]. A repeated event is no longer random, but is a deliberate act. In this case, the proceedings of the three suits show a consistent pattern/trend followed by the filing counsel, by design, with an intent of interfering with the judicial process.

53. This Court would have considered the merits of the explanation of *inadvertence* offered by the Respondent. However, in view of the consistent pattern and approach adopted by the Respondent's filing counsel, as noticed hereinabove, this explanation cannot be accepted. The omission, in the opinion of this Court, cannot be attributed to *inadvertence* or *oversight* but appears to be deliberate and wilful, with a view to withholding material information from the Court to seek orders at an ex-parte hearing.

54. We are of the firm view that if the Respondent's misconduct is overlooked by us on the touchstone of likelihood of confusion amongst the public under the law of infringement, we will have to forever sacrifice the principle of clean hands for the plaintiff in litigation pertaining to infringement or passing off. In our considered opinion, if the Respondent's wilful misconduct is condoned, the harm caused to the judicial process will be far more that that caused by the sale of the Appellants' products.

55. The Appellants are manufacturing the products bearing the impugned marks through an entity which holds an FSSAI[15] license. The manufacturing is therefore statutorily regulated, and the sales are also regulated under the GST regime. The learned Single Judge has already observed that there are no

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[14] Ian Fleming, Goldfinger (Jonathan Cape, 1959)
[15] Food Safety and Standards Authority of India

similarities in the rival trade dresses. In case the Respondent finally succeeds in the suit, it can be duly compensated with damages. The Respondent, however, by its conduct disentitles itself to any interim injunction. Furthermore, considering that the Appellants have been marketing their products since March 2026, and there is nothing on record to prima facie indicate that their products are sub-standard or otherwise pose any risk to public health or safety, the question of the quality of the Appellants' products is a matter to be determined at trial on the basis of evidence. At this stage, this Court is unable to accept the contention that any overriding public interest is involved. The present proceeding is essentially a commercial dispute concerning trademark infringement, in which the parties' commercial interests are at stake.

56. In view of the aforesaid findings, we are of the considered opinion that the Respondent, having obtained an ex-parte ad-interim injunction by suppressing material facts and documents, cannot be permitted to retain the benefit of such conduct without consequences. In fact, the interim injunction application by itself has to be dismissed for this non-disclosure. A litigant, who seeks equitable relief and more so an ex-parte relief is expected to approach the Court with complete candour and utmost good faith. The Respondent has signed the Statement of Truth accompanying the plaint, thereby affirming that the pleadings and the documents filed before the Court constituted a full, true and complete disclosure of all material facts. The Respondent is as much responsible for this suppression as is the filing counsel. Having signed the pleadings on oath, the Respondent must also bear responsibility for the non-disclosure. Accordingly, the Respondent is directed to pay costs of Rs. 2,00,000/-, to be deposited with the Delhi High Court Legal

Services Committee within a period of two [2] weeks.

57. The impugned order dated 20.05.2026 hereby stands vacated. In addition, I.A. 14201/2026 pending before the learned Single Judge also stands dismissed. The products seized from the Appellants are directed to be released from *Superdari* and the Appellants are at liberty to dispose of the said products.

58. With the aforesaid findings, the present appeal is allowed. Pending applications in the appeal are disposed of.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

AUGUST 20, 2026/*rhc*/aa