

**In the High Court at Calcutta
Commercial Appellate Jurisdiction
Original Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

**A.P.O.T. No.53 of 2025
(IA No.GA-COM 1 of 2025)
Arising out of
IP-COM No.18 of 2024
(IA No.GA 1 of 2024 and GA 2 of 2024)**

**Emami Limited
Vs
Dabur India Limited**

For the appellant	:	Mr. Debnath Ghosh, Sr. Adv., Mr. Shuvasish Sengupta, Adv., Mr. Biswaroop Mukherjee, Adv., Ms. Mini Agarwal, Adv., Ms. Ratnadipa Sarkar, Adv.
For the respondent	:	Mr. Sudipto Sarkar, Sr. Adv., Mr. Sourajit Dasgupta, Adv., Mr. R. Jawaharlal, Adv., Ms. Megha Kumar, Adv., Mr. Sudhakar Prasad, Adv.
Heard on	:	11.06.2025 & 25.06.2025
Hearing concluded on	:	25.06.2025
Judgment on	:	02.07.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal assails an order dated January 17, 2025 passed in- IP-COM No.18 of 2024 along with GA-COM 1 of 2024 and GA-COM 2 of 2024, modifying a previous order dated July 11, 2024 passed in the said suit granting ad interim injunction restraining the respondent, its

men, servants, agents, representatives and/or anyone claiming through the respondent from displaying and/or playing and/or airing and/or telecasting their advertisements for the product “Cool King” by showing the bottle/container of the products “Dermi Cool” and/or “Navratna” of the petitioner/appellant and by referring to the same as “*Sadharan*”. By the impugned order, the learned Single Judge has modified the ad interim order dated July 11, 2025 to the extent that there shall be an interim order of restraint of the impugned advertisement, by making it clear that the order of restraint shall apply to the impugned advertisement as a whole and not any portion or any part or word of the impugned advertisement. In the impugned order, it was inter alia observed that the use of the word “ordinary” or “*Sadharan*” *per se*, without any identification, cannot be interpreted to be defamatory or disparaging.

2. The suit in which the impugned order was passed has been instituted by the appellant Emami Limited alleging disparagement of its product, a prickly heat powder, marketed under the name and style of “Dermi Cool” and “Navratna”. In the impugned advertisement, a popular actor of the Hindi Film Industry is seen to promote the product of the defendant/respondent, Dabur India Limited, by the name of “Cool King”, which is supposedly a similar product as the appellant’s. At the inception of the advertisement, which is a video clip widely broadcast in television as well as audio visual media across social platforms, certain ladies are shown to spew fire due to the extreme heat. Apparently, ice crystals subsequently drop from the sky. A man, who was sweltering in

the previous heat waves, was carrying a bottle, allegedly resembling the bottle of the plaintiff's products, over the shape and design of which the plaintiff has trademarks. Subsequently, coinciding with the ice crystals, the popular film actor arrives at the scene with a bottle of the defendant's product, who labels the earlier bottle as "*Sadharan*" (ordinary) and providing a viable better alternative in the defendant's product. Subsequently, the earlier product is replaced by the product of the defendant by the protagonist, the man who was earlier sweltering in the heat, and the defendant's product accepted as the better one.

3. Learned senior counsel for the appellant submits that the use of the word "*Sadharan*", in the context of the advertisement, demeans and denigrates the product of the plaintiff/appellant. The resemblance between the bottle shown by the protagonist as "*Sadharan*" with the unique tapering bottle of the plaintiff/appellant, which has a typical notch on the slanting cap of green colour, is striking. It is argued that since the plaintiff is the market leader through its two products as mentioned earlier, the dissemination of the advertisement to a huge cross-section of the Indian society would immediately bring about a comparison between the products of the plaintiff, which is shown in poor light, and that of the defendant and would adversely affect the goodwill and image of the plaintiff/appellants' product.
4. Learned senior counsel for the appellant submits that even after the impugned order, the defendant has been continuing with the same advertisement with the same popular actor, merely by replacing the

bottle shown in the same. However, the bottle still remains similar to that of the plaintiff/appellant's product.

5. Apart from the same, it is argued by the appellant that the recall value in the public perception is high since the general public, who are the target group of the advertisement, would immediately connect the denigrated bottle with that of the appellant's products, which would considerably undermine the goodwill of the appellant's products in the public mind.
6. It is next argued that the expression "*Sadharan*" in the advertisement cannot be taken out of context. Used in the way that it has been, the same is disparaging and is a direct denigration of the appellant's product.
7. It is reiterated that while the appellant's products dominate the market, the respondent is a new entrant in the field of prickly heat powders. As such, the recall value mentioned earlier is pervasive.
8. Learned senior counsel for the appellant cites a Division Bench Judgment of the Delhi High Court in the matter of *Pepsi Co., Inc. and Ors. v. Hindustan Coca Cola Ltd. and Anr.*, reported at 2003 SCC OnLine Del 802 where under similar circumstances, it was held that the court is to look at whether the advertisement or the commercial, as the case may be, merely puff the product of the advertiser or in the garb of doing so directly or indirectly contends that the product of the other trader is inferior.
9. Learned senior counsel further cites *Dabur India Limited v. Colgate Palmolive India Ltd.*, reported at (2005) 79 DRJ 461, where a learned

Single Judge of the Delhi High Court construed the expression “*Sadharan*” to prefix the genre of the concerned product as a generic disparagement of the class of products.

10. Next relying on a Division Bench judgment of the Madras High Court in the matter of *Gillette India Limited v. Reckitt Benckiser (India) Private Limited*, reported at 2018 SCC OnLine Mad 1126, learned senior counsel for the appellant argues that under similar circumstances, the said Division Bench held that advertisements in the electronic audio-visual media leave an indelible impression in the minds of viewers and have far greater impact than print advertisement. It was held there that there was a strong *prima facie* case of disparagement in view of the denigration of the concerned product. The Division Bench observed *inter alia* that it was permissible for an advertiser to compare the technology or the formula of the products or even claim its technology or formula to be better than others and that the technology of the others is obsolete, but without denigrating or disparaging the products of others.
11. Lastly, learned senior counsel relies on *Hindustan Unilever Limited v. Reckitt Benckiser (India) Private Limited*, reported at MANU/DE/2447/2023, where another Division Bench of the Delhi High Court observed that the similarity between competitive trademarks is not required to be resolved by juxtaposing them and closely examining various features of the trademarks. Similarity between the trademarks is required to be reviewed from the standpoint of a person of average intelligence and an imperfect recollection. It was held that it is not

necessary that an advertisement must expressly and clearly mention the competitor's products.

12. While opposing the appellant's arguments, learned senior counsel for the respondent submits that the bottle shown in the offending advertisement is different than that of the products of the appellant. As opposed to the appellant's bottle, which is of a tapering shape and a typical notch in its cap which is green in colour, the bottle shown in the advertisement is uniformly cylindrical, having a common cap which is black in colour.
13. It is argued that the lapse of almost a year between the passing of the initial ad interim order of injunction and the present impugned order has denuded any recall value whatsoever, even if there was any, in the public mind. That apart, the expression "*Sadharan*" is not disparaging per se, as rightly observed by the learned Single Judge.
14. Learned senior counsel further contends that the appellant has not complained of any infringement of the trademark of its bottle, nor does it have any trademark rights on the colour of the cap. Hence, the learned Single Judge was justified in passing the impugned order.
15. It is further pointed out on behalf of the respondent that the respondent categorically offered to remove any other bottle than that its own product altogether from its advertisement at the stage of hearing of the application under Order XXXIX Rule 4 of the Code of Civil Procedure filed by the respondent, which was taken up for disposal along with the temporary injunction application of the appellant in the impugned order; however, such offer was refused by the appellant.

16. The appellant contends that the genre of the products of the parties are different – that of the appellant being an Ayurvedic product having such certification whereas the product of the respondent is a cosmetic item.
17. Learned senior counsel cites *Hindustan Unilever Ltd. v. Emami Ltd.*, reported at 2019 SCC OnLine Del 7809, where it was held that the cream depicted in the impugned TV Serial did not *prima facie* resemble that of the product of the plaintiff therein.
18. It is pointed out by learned senior counsel for the respondent that in the present case, the bottle used in the impugned advertisement does not resemble that of the appellant's product.
19. Learned senior counsel next cites *Dabur India Ltd. v. Emami Ltd.*, reported at 2019 SCC OnLine Del 9022, where another learned Single Judge of the Delhi High Court took into consideration similar circumstances and held that it is permitted to compare between products and for an advertiser to claim that his product is the best.
20. Learned senior counsel next cites *Dabur India Ltd. v. Wipro Ltd.*, reported at 2006 SCC OnLine Del 391, where a learned Single Judge of the Delhi High Court clarified that the disparagement should at least border of defamation, which is absent in the present case.
21. Learned senior counsel submits that the landmark judgment in the field is that of *Reckitt & Colman of India Ltd. v. M.P. Ramchandran*, reported at (1999) 19 PTC 741 [also reported at 1998 SCC OnLine Cal 422], where it was held by a learned Single Judge of this Court that an

advertiser can boast that its product has relative advantages over market competitors as well as is technologically superior.

- 22.** In the present case, it is argued that none of the criteria for getting an injunction in a disparagement suit have been satisfied, since there is no resemblance between the bottle now being shown in the impugned advertisement and that of the appellant's products. The recall value argument is also baseless.
- 23.** Upon carefully considering the submissions of the parties and on a close scrutiny of the two bottles – the one used in the offending advertisement and the bottle containing the products of the appellant – we find a marked difference between the two, which is visible to the naked eye. Whereas the appellant's bottle is of a tapering shape, having a green slanting cap with a distinct and unique notch, the bottle shown in the assailed advertisement is a uniform cylinder without any taper and has a round, level cap of black colour, which comes across as blackish in the visual depiction in the advertisement. Thus, the bottles are entirely different from each other, even without juxtaposing the two and going by the standard of a person of ordinary prudence and imperfect recollection.
- 24.** While addressing the recall value contended by the appellant, we do not find much merit in that either. We have to keep in mind that the ad interim order of injunction was initially passed on July 11, 2024, after which the offending bottle was removed altogether from the advertisement. Such position persisted till the date of the impugned order, that is, January 17, 2025. Thus, about six months elapsed in-

between, during which period no bottle was shown in the advertisement at all than that of the respondent's product.

- 25.** Going by the perception of the common person having average remembrance, we find that a double recall would have to be attributed to such perception in order to accept the contention of the appellant. The first component of such recall would be that the initial offending advertisement carried a bottle similar to the one shown in the current advertisement and the second component would be that the previous bottle was associated with the product of the appellant.
- 26.** Even taking into consideration the overreaching sweep of the appellant's products in the market, unless one is an avid follower of advertisements, having nothing better to do, it is improbable that a common target consumer of normal prudence would have such double recall upon viewing the 'offending' advertisement, connecting the present bottle with that of a bottle which was being shown six months back, and to relate the previous bottle with the product of the appellant.
- 27.** Thus, in the absence of any direct correlation between the bottle now being shown in the disputed advertisement and that containing the product of the appellant, we find that the learned Trial Judge was completely justified in turning down the "recall value" argument of the appellant.
- 28.** However, we may note here that the respondent's defence, that the appellant's and respondent's respective products are of different genres and hence cannot be connected or do not fall in the same bracket of

competition, is not tenable. The public is not supposed to be so educated in the ingredients of the products that they would discern between the parties' products on the ground that one is Ayurvedic, having medicinal qualities, and the other merely cosmetic. There is nothing in the assailed advertisement to refer to the ingredients used in either of the products as well. In the eye of the ordinary person, both come under the genre of prickly heat powders.

- 29.** Coming to the next component of the appellant's arguments, the word "*Sadharan*" (ordinary), even if used in the 'offending' advertisement, is utilized in its generic sense, not to be equated with "inferior" so as to debase the product of the appellant. The earlier bottle shown in the advertisement is not degraded or thrown away or dealt with in a derogatory manner. The protagonist using the earlier bottle is merely convinced by the popular actor to use the product of the respondent instead of the earlier product, the latter being labelled as ordinary as compared to the respondent's product.
- 30.** The lead landmark judgment in the field, as delivered by a learned Single Judge of this Court in *Reckitt & Colman of India Ltd. (supra)*¹ clearly distinguishes between an advertisement boasting about the relative advantages of its own product and its technological superiority, even if untrue. It was held that it is permissible to portray that the advertiser's product is the best in the world. However, what is shunned is the direct or indirect denigration of the product of another manufacturer. Use of the word "*Sadharan*" in the context of the

¹ *Reckitt & Colman of India Ltd. v. M.P. Ramchandran*, reported at (1999) 19 PTC 741 [also reported at 1998 SCC OnLine Cal 422].

present advertisement does not speak ill about the product or say that it is inferior as such. It merely projects the respondent's product as extra-ordinary as compared to others' products, which are said to be "Sadharan" or ordinary. As held by the Delhi High Court consistently, particularly in *Dabur India Ltd. v. Emami Ltd. (supra)*² and *Hindustan Unilever Ltd. (supra)*³, there has to be a *prima facie* resemblance of the two products and a clear denigration of the plaintiff's product, drawing a parallel between a libel action and a suit for disparagement. As held in *Dabur India Ltd. v. Wipro Ltd. (supra)*⁴, for an advertisement or a commercial to be disparaging, it should be defamatory or should at least border on defamation.

- 31.** In *Dabur India Ltd. v. Emami Ltd. (supra)*⁵, it was highlighted that a propagation of the comparative advantage of the advertiser's product is permissible, even projecting that its goods are the best, without saying that the competitor's good is bad. The "look and feel" of the advertisement and the message conveyed to an average person is what is to be construed and the court, it was held, cannot suffocate competition on a perceptive understanding. The right to free commercial speech enshrined in Article 19(1)(a) of the Constitution was also stressed.
- 32.** In the present case, while balancing the right of free commercial speech under Article 19(1)(a) and the right to do business under Article 19(1)(g) of the Constitution, we have to strike a balance between such rights of

² *Dabur India Ltd. v. Emami Ltd.*, reported at 2019 SCC OnLine Del 9022.

³ *Hindustan Unilever Ltd. v. Emami Ltd.*, reported at 2019 SCC OnLine Del 7809.

⁴ *Dabur India Ltd. v. Wipro Ltd.*, reported at 2006 SCC OnLine Del 391.

⁵ *Dabur India Ltd. v. Emami Ltd.*, reported at 2019 SCC OnLine Del 9022.

advertising its own product available to the respondent with the right of the appellant to protect its own product.

- 33.** In *Pepsi Co. (supra)*⁶, cited by the appellant, the concerned actor had mouthed the name of the plaintiff's product and a circular device and colour combination resembling the plaintiff's product was used.
- 34.** As opposed thereto, in the instant case, there is no mouthing of the name of the appellant's product at all and the bottle shown is completely different in shape, size and colour from that of the appellant's product.
- 35.** In *Dabur India Limited v. Colgate Palmolive India Ltd. (supra)*⁷, a learned Single Judge of the Delhi High Court in 2005 had discussed the concept of "*Sadharan*". However, in the said case, a tooth powder (*dant manjan*) was the product in issue. The expression "*dant manjan*", which was a part of the name of the plaintiff's product in the said case, was prefixed in the offending commercial by the word "*Sadharan*", but coupled with the claim that such "*Sadharan*" *dant manjan* was abrasive and rough on the teeth.
- 36.** In the present case, however, the use of the word "*Sadharan*" is not coupled with any such aspersion against the product of the appellant or, for that matter, any other product. Also, the names of the appellant's products have not been used at all by replacing only a part of it to create an impression in the mind of the viewer that the products are the same.

⁶ *Pepsi Co., Inc. and Ors. v. Hindustan Coca Cola Ltd. and Anr.*, reported at 2003 SCC OnLine Del 802.

⁷ *Dabur India Limited v. Colgate Palmolive India Ltd.*, reported at (2005) 79 DRJ 461.

- 37.** In *Hindustan Unilever's* case⁸, the Division Bench of the Delhi High Court had categorically observed upon a comparison that the shapes of the bottles of the two products were deceptively similar. Borrowing the said proposition, even if we do not juxtapose and closely examine the various features of the two bottles and view the similarity from the standpoint of a person of average intelligence and imperfect recollection, we fail to attribute any recall value connecting the appellant's product with the bottle currently used in the impugned commercial. Thus, the reliance of the appellant on the said judgment is misplaced.
- 38.** The Division Bench of the Madras High Court, in *Gillette India Limited (supra)*⁹, had elaborated the synonyms of the term "disparagement", which has to tantamount to derogation and denigration of the product of the competitor. In the said case, there was a specific derogation of all products of a particular genre (hair removal creams) as a whole, coupled with the allegation that all such creams use chemicals as strong as bathroom cleaners. If a cosmetic product for hair removal, to be used on the human skin, is said to contain chemicals as strong as bathroom cleaners, it would evidently create an immediate adverse inference in the mind of the viewers regarding the subject-product which was sought to be denigrated.
- 39.** We find a complete absence of any such malicious intention in the impugned advertisement in the case at hand.

⁸ *Hindustan Unilever Limited v. Reckitt Benckiser (India) Private Limited*, reported at MANU/DE/2447/2023.

⁹ *Gillette India Limited v. Reckitt Benckiser (India) Private Limited*, reported at 2018 SCC OnLine Mad 1126.

- 40.** Thus, viewed from all perspectives, we fail to connect the use of the word “*Sadharan*” with the product of the appellant. Hence, although the offending advertisement uses the expression “*Sadharan*”, we agree with the learned Trial Judge that the appellant is being hypersensitive on such issue.
- 41.** The freedom of commercial speech of the respondent and its fundamental right to do business cannot be throttled on a vague perception of disparagement, which is completely illusory in the present case.
- 42.** In the guise of a specific injunction, as prayed for in the plaint, what the appellant is now seeking to obtain from the court is a dynamic plus injunction, restraining all future advertisement of the respondent. In its original form as granted in July, 2024, the ad interim order of injunction in favour of the appellant would restrain the respondent from broadcasting any advertisement which would show the bottle of the appellant’s product “Dermi Cool” and “Navratna”. We find that the modified order which is impugned herein is wider in nature, stopping the advertisement as a whole. In its original form, the ad interim order would have restrained only the specific use of the bottles of the appellant’s products and, arguably, would not even have restrained the use of a bottle of similar shape and size and having a cap of the same colour (with its unique notch) as the appellant’s product, merely if the name of the products were not used.
- 43.** As opposed thereto, by the present impugned order, the advertisement has been completely stopped.

- 44.** Even otherwise, the injunction, if granted in the form as prayed for in the plaint, would have restrained the respondent from broadcasting any advertisement which would disparage the product of the appellant. An injunction of such generic and blanket nature would be unimplementable, since it is for the court to decide, on a case-to-case basis, as to whether a particular advertisement actually disparages the said product. As opposed thereto, the modified injunction order as granted by the learned Single Judge in the present case specifically restrains the offending advertisement from being aired at all, thus, giving complete and implementable protection to the appellant.
- 45.** Whether a subsequent advertisement violates such injunction is a matter for the Trial Court to consider on the facts of each alleged violation withing the contemplation of Order XXXIX Rule 2A of the Code of Civil Procedure. A mere allegation of *post facto* violation of an order does not vitiate the order itself in any manner, justifying interference with the order as it stands. That apart, as held above, we do not find any direct or indirect reference to the product of the appellant in the offending advertisement, which is being disseminated on social audio-visual media and television on the strength of the order impugned herein. As such, we do not find any merits in the appellant's arguments.
- 46.** Thus, A.P.O.T. No.53 of 2025 is dismissed on contest without any order as to costs. Consequentially, IA GA-COM 1 of 2025 stands disposed of as well.
- 47.** Interim orders, if any, stand hereby vacated.

- 48.** It is clarified that this Court has not conclusively determined the merits of the respective contentions of the parties, and it will be open to both sides to argue their respective contentions on merits at the trial of the suit before the learned Single Judge.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)