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

+ **CS(COMM) 1127/2024 with I.A. 48408-48412/2024**

ELDER PRROJECT LIMITED

.....Plaintiff

Through: Mr. C.M. Lall, Sr. Advocate with Mr. Kaveesh Nair, Mr. Utsav Saxena, Ms. Vidula Mehrotra and Ms. Annanya Mehan, Advocates.

versus

**ELDER DRUGS AND PHARMACEUTICAL
PRIVATE LIMITED**

.....Defendant

Through: Mr. Uttam Datt, Senior Advocate with Mr. Vikas Rohtagi, Ms. Sonakshi Singh, Mr. Kumar Bhaskar, Mr. Neeraj Singh, Mr. Kumar Gaurav and Mr. Pankaj Rohilla, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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16.12.2024

I.A. 48409/2024 (exemption from filing original documents, certified copies or true typed documents of the dim documents)

1. Allowed, subject to the plaintiff filing legible copies of the annexures within four (4) weeks from today.
2. The Plaintiff is exempted from filing original documents at this stage.
3. The application stands disposed of.

I.A. 48410/2024 [O-XI R-1(4) of the Commercial Courts Act]

4. The present application has been filed on behalf of the plaintiff seeking leave to file additional documents under the Commercial Courts Act, 2015.



5. The plaintiff is permitted to file additional documents in accordance with the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

6. Accordingly, the application is disposed of.

I.A. 48411/2024 (u/s 12A of Commercial Courts Act)

7. As the present suit contemplates urgent interim relief, in light of the judgment of the Supreme Court in *Yamini Manohar v. T.K.D. Krithi*, 2023 SCC Online SC 1382, exemption from the requirement of pre-institution mediation is granted.

8. The application stands disposed of.

I.A. 48412/2024 (exemption from filing court fee)

9. Mr. C.M. Lall, senior counsel appearing on behalf of the plaintiff has drawn attention of the Court to the order passed by the Coordinate Bench on 13th November, 2024 in CS(COMM) 1003/2024, where the Coordinate Bench has noted that the Court fees paid in the said suit has been locked and shall be unlocked and allowed to be used by the plaintiff in the fresh suit, to be filed on the same cause of action.

10. It is submitted that since the present suit is relating to the same cause of action as that of CS(COMM) 1003/2024, the plaintiff shall be permitted to use the said Court fees in the present suit.

11. I am in agreement with the aforesaid submissions

12. Accordingly, Registry shall use the Court fees paid by the plaintiff in CS(COMM) 1003/2024 for the purposes of the present suit.

13. Application stands disposed of accordingly.



CS(COMM) 1127/2024

14. Let the plaint be registered as a suit.
15. Issue summons.
16. Mr. Vikas Rohtagi, Advocate accepts summons on behalf of the defendant and waives issuance of formal summons.
17. Written statement shall be filed by the defendant within thirty days from the date of the receipt of summons. Along with the written statement, the defendant shall also file affidavit of admission/denial of the documents of the plaintiff, without which the written statement shall not be taken on record.
18. Liberty is given to the plaintiff to file replication, if any, within thirty days from the receipt of the written statement. Along with the replication filed by the plaintiff, affidavit of admission/denial of the documents of the defendant be filed by the plaintiff.
19. The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document, which is not in their power and possession, its detail and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.
20. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.
21. List before the Joint Registrar on 28th February, 2025 for completion of service and pleadings.
22. List before the Court on 6th February, 2025.



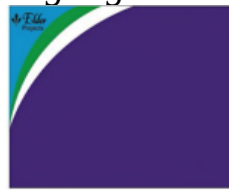
I.A. 48408/2024 (u/O-XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908)

23. The present suit has been filed seeking relief of permanent injunction restraining the defendant from infringing the trademark, trade dress and copyright of the plaintiff, passing off along with other ancillary reliefs.

24. Mr. C.M. Lall, senior counsel appearing on behalf of the plaintiff has drawn attention of the Court to the following registrations in favour of the plaintiff, detailed at paragraph 2 of the plaint:

(i)  bearing Registration No. 3931941 in Class 5 (“**Elder Trademark**”); and

(ii) Copyright Label bearing registration No. 2153/2020- CO/A,



TMR-CC No. 97155 (“**Elder Label**”), which forms a notable part of the plaintiff’s packaging.

(iii) “**ELDERVIT XTRA XT**” bearing Registration No. 4312597 in Class 5 of which the Plaintiff is the valid assignee vide the Assignment Deed dated 18.06.2024. An application for assignment of the mark “**ELDERVIT XTRA XT**” is currently pending before the Ld. Trade Marks Registry (“**TM Registry**”).

(iv) “**ELDERVIT**” trademark (unregistered) which the plaintiff has been the prior user of, and licensed manufacturer of products since 1996.

25. Mr. Uttam Datt, senior counsel appearing on behalf of the defendant submits that the trademark “**ELDERVIT**” has been used by the defendant from a date that is prior to the date claimed by the plaintiff.

26. To be noted, insofar as the mark “**ELDER**” is concerned, the



defendant is using the said mark in exactly the same styling as that used by the plaintiff.

27. Mr Datt seeks some time to take instructions and file a response.

28. Reply be filed within four (4) weeks.

29. In the reply, the defendant shall disclose its sales figures for the last five (5) years in respect of products selling, using the mark “ELDER”, “ELDERVIT”, “ELDERVIT XTRA XT” *etc.* since inception.

30. Rejoinder thereto, if any, be filed within two (2) weeks thereafter.

31. List before the Court on 6th February, 2025.

AMIT BANSAL, J

DECEMBER 16, 2024

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