
(2025) 04 CAL CK 0929

In the Calcutta High Court, Original Side

Case No : G.A. (COM) No. 1, 2 Of 2024 In IP (COM) No. 22 Of 2024

New Life Laboratories Private Limited

APPELLANT

Vs

NLCARE Private Limited

RESPONDENT

Date of Decision : 29-04-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2025) 04 CAL CK 0929

Hon'ble Judges : Krishna Rao, J

Bench : Single Bench

Advocate : Rudraman Bhattacharyya, Siddhartha Das, Saptarshi Mukherjee, Akash Munshi, Harsh Tiwari, Souvik Kundu, Ranjan Bachawat, Sayan Roy Chowdhury, Tanmoy Roy, Rahul Vidani, Bhavesh Garodia

Final Decision : Allowed

Judgement

Krishna Rao, J

1. The plaintiff has filed an application being G.A. (Com) No. 1 of 2024 praying for grant of interim order restraining the defendant from infringing the plaintiff's registered mark "NEW LIFE" by use of the mark "NEW LIFE" and /or "NL". By an order dated 19th August, 2024, this Court passed an Ad-Interim ex-parte order against the defendant and the same is still in existence. The defendant has filed an application being G.A. (Com) No. 2 of 2024 praying for vacating of interim order.

2. The plaintiff has filed the suit for infringement and passing off. As per the case of the plaintiff in the year 1961, one Dr. Mohammad Idrees commenced practicing Homeopathy in Bhopal, Madhya Pradesh. In the year 1970, the eldest son of Dr. Mohammad Idrees, namely, Dr. Mohammed Ilyas joined the profession of practicing homeopathy and prescribed innovative homeopathic medicines to his patients. Such patients upon being cured of their ailments by such medications began to fondly refer to the Dr. Ilyas as the giver of "new life" which

give the inspiration for Dr. Ilyas to adopt the trade name "NEW LIFE" to represent his service. In order to expand the business, Dr. Ilyas opened an outlet-come clinic for prescribing and selling homeopathic medicines under the name and style of "NEW LIFE HOMEO STORE" as his sole concern. The said Dr. Ilyas even devised a unique logo or device containing the tradename i.e. "NEW LIFE" as the house mark of the business of the said Dr. Ilyas.

3. Mr. Rudraman Bhattacharyya, Learned Senior Advocate representing the plaintiff submits that due to rise in the popularity, goodwill, revenues and profits of the business of Dr. Ilyas as homeopath and homeopathic medicine merchant, Dr. Ilyas along with his wife, Mrs. Ishrat Begum and his sons, namely, Dr. Mohammad Zakariya, the eldest son, Dr. Mohammad Zaki, the second son and the Dr. Salman Mohammad, the third son primarily promoted the plaintiff company in the year 1995, which also expanded into manufacturing homeopathic medications instead of merely trading in them.

4. Mr. Bhattacharyya submits that the entirety of the business of selling homeopathic medicinal drugs setup by Dr. Ilyas came under the banner of the plaintiff which became the principal proprietor of such business including the goodwill attached thereto and the tangible and intangible assets thereof. He submits that Dr. Ilyas by his conduct, effectively waived his rights associated with the said moniker and the tradename or trademark "NEW LIFE" which became valuable assets of the plaintiff company.

5. Mr. Bhattacharyya submits that the plaintiff and its processor of concern has invested substantial sums in research and development for the purposes of manufacturing and selling various unique homeopathic medications of multiple kinds that offer cures to persons suffering from several ailments. He submits that the trademark "NEW LIFE" has earned a glittering reputation in the market. He submits that the public and people of the trade identity, the name "NEW LIFE" with the plaintiff alone to the extent that it has become a household name across the country. He submits that the members of the public and consumers rely upon the plaintiff's products bearing the trade mark "NEW LIFE" regularly to address their daily needs for homeopathic medications.

6. Mr. Bhattacharyya submits that apart from the common law rights acquired in respect of the mark "NEW LIFE" applied for and obtained statutory protection thereof under the Trade Marks Act, 1999 by way of registration being No. 2477030 in Class 35 with the Trade Marks Registry.

7. Mr. Bhattacharyya submits that the plaintiff came to know that the defendant has been infringing upon and passing off the trademark of the plaintiff by utilizing the abbreviation of the name "NEW LIFE" i.e. "NL" in its corporate name "NLCARE Private Limited". He submits that the defendant is engaged in the same business as the plaintiff i.e. trading, selling, manufacturing, wholeselling, retailing, advertising and marketing of homeopathic medicinal drugs or preparations.

8. Mr. Bhattacharyya submits that the plaintiff further came to know that the defendant had made applications to register the said corporate name with the Trade Marks Registry along with a deceptively similar word mark and a deceptively similar logo containing the abbreviation of the name "NEW LIFE" or the said name itself as well. He submits that the plaintiff has immediately taken steps to file opposition to the application No. 5762782 filed by the defendant. He submits that the other two marks under application Nos. 5595531 and 5595533 stands objected, the plaintiff has not filed oppositions against the same.

9. Mr. Bhattacharyya submits that the defendant is utilizing the deceptively similar mark without permission or license from the plaintiff who is the prior user and without any right to do so, for marketing and selling the same goods or similar categories of goods as that of the plaintiff. He submits that the deceptively similar marks are being utilized: on its goods, as part of its packaging and trade dress and on the hoardings and boards on its shops and outlets.

10. Mr. Bhattacharyya submits that the defendant is not only infringing upon the registered trade mark of the plaintiff "NEW LIFE" but also seeking to pass off its products and services as the products and services of the plaintiff. He submits that the defendant by such acts is seeking to erode the market share captured by the plaintiff under the mark "NEW LIFE" and is seeking to redirect the goodwill associated with trademark/ tradename "NEW LIFE". He submits that the use of offending names and marks by the defendant is likely to dilute the distinctive character of the plaintiff's trademark "NEW LIFE" which is also its business and tradename.

11. Mr. Bhattacharyya submits that the defendant's principal shareholders/ directors and controlling minds are one Md. Zaki, Mrs. Saima Zaki and Md. Faizan. Messrs. Md. Zaki and Md. Faizan are the sons of late Dr. Ilyas and Mrs. Zaki is the wife of Md. Zaki. He submits that Md. Zaki was a shareholder and director of the plaintiff at the time of its founding. Mrs. Zaki and Md. Faizan had been inducted as shareholders and directors of the plaintiff later. He submits that in the year 2018, the said persons resigned from their directorship of the plaintiff and disposed of their shareholdings in the plaintiff for valuable consideration in favour of Md. Zakariya, the elder son of Dr. Ilyas, Md. Salman, the third son of Dr. Ilyas, Md. Zaheer, fifth son of Dr. Ilyas, Md. Azam, sixth son of Dr. Ilyas and along with Mrs. Ishrat Begum, wife of Dr. Ilyas all being the directors of the plaintiff. He submits that upon severing all ties with the plaintiff, the defendant was promoted by M/s. Zaki and Faizan along with Mrs. Zaki in the year 2019 and the said persons are at present directors of the defendant.

12. Mr. Bhattacharyya submits that M/s. Zaki and Faizan along with Mrs. Zaki have set up the defendant concern with its deceptively similar and infringing corporate name and have been running its business utilizing the marks "NEW LIFE".

13. Mr. Bhattacharyya has relied upon the judgment in the case of Surjeet Book Depot vs. Surjeet Book Depot (P) Ltd. & Ors. reported in MANU/DE/0513/1982 and submitted that the Delhi High Court held that even a person named "Surjeet" could not use that name as his trademark due to the mark "Surjeet Book" having become the registered trademark of the partnership firm previously created by such person.

14. Mr. Bhattacharyya has relied upon the judgment in the case of Sri Narasu's Coffee Company Ltd. vs. Narasu's Sarathy Industries & Anr. reported in 2019 SCC OnLine Mad 38978 and submits that the registered proprietor's rights would have primacy and the descendants of Mr. Sarathy could not claim to have proprietary rights over the mark "Narasu". It was held that only one person i.e. the Registered Proprietor would have proprietary over the mark. The family members of the originator of the mark "Narasu" could not claim to have proprietary rights in the same.

15. Mr. Bhattacharyya has relied upon the judgment in the case of M/s. Power Control Appliances vs. Sumeet Machines Pvt. Ltd. reported in (1994) 2 SCC 448 and submitted that there can be only one mark, one source and one proprietor, because it cannot have two origins and as such, one trademark cannot be used in rivalry and in competition with each other.

16. Mr. Bhattacharyya has relied upon the judgment in the case of Dhananjay Rathi vs. Shree Vasu Steels Pvt. Ltd. & Ors. reported in MANU/DE/3191/2023 and submitted that only the plaintiff is the registered proprietor, whereas the defendant is not. The registration certificate of the plaintiff with the wording "NEW LIFE" as the prominent feature of the said mark has been registered with effect from 12th February, 2013 and the defendant's registration applications are pending.

17. Mr. Bhattacharyya has relied upon the judgment in the case of Gujarat Bottling Co. Ltd. Vs. Coca Cola Co. & Ors. reported in (1995) 5 SCC 545 and submitted that the family members who are using the plaintiff's mark are doing so as common law licensees of the plaintiff. In fact, they merely sell products manufactured by the plaintiff (without manufacturing it themselves) and share profits with the plaintiff. Such sales serve to enhance the mark's distinctiveness. The oral licensing of the mark to family members underscores the connection between the mark and plaintiff. Such oral licenses are wholly permissible dehors the Act.

18. Mr. Ranjan Bachawat, Learned Senior Advocate representing the defendant submits that the plaintiff has deliberately and intentionally suppressed material facts which are relevant for the purpose of adjudication of the instant application. He submits that the plaintiff has deliberately only mentioned that the suit was filed in the Delhi High Court and was later withdrawn but the plaintiff deliberately not filed the orders passed by the Delhi High Court which would prove that the argument on the interim application were heard by the Delhi High Court at length

on several occasions and no interim injunction in favour of the plaintiff was granted.

19. Mr. Bachawat submits that the plaintiff has not disclosed to this Court that the defendant appeared during the ex-parte stage and filed a reply to the application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 by disclosing the stand but the plaintiff has deliberately not disclosed and filed the said reply in the suit at the time of grant of ad-interim order. He submits that the plaintiff has deliberately not filed the documents filed by the defendant in the suit at Delhi High Court which clearly shows that the trade mark "NEW LIFE" with device of leaf has been in existence and use much prior to the incorporation of the plaintiff company and every members of the family of Dr. Idrees is using the same.

20. Mr. Bachawat submits that the plaintiff has concealed the fact that every members of the family of Dr. Idrees is using the trade mark and trade name "NEW LIFE" on their shops in their individual capacities. He submits that there are almost 20 shops cum clinics being run by different family members as separate entities in the city of Bhopal since last several decades. He submits that the directors of the defendant have been running their shops-cum-clinic under the trade mark and trade name "NEW LIFE" at least since the year 2002 to the knowledge of the plaintiff. He submits that the shops of the plaintiff and the defendant are next to the each other to such extent that the two shops share the common boundary wall.

21. Mr. Bachawat relied upon the judgment in the case of Satish Khosla vs. Eli Lilly Ranbaxy Ltd. and Ors. reported in MANU/DE/ 0763/1998 and submitted that it was obligatory on the part of the plaintiff to disclose to the Court that there was an earlier suit filed and in the suit, the interim order was refused.

22. Mr. Bachawat submits that the trade mark "NEW LIFE" was adopted by one Late Dr. Idrees who established a Homeopathic clinic by the name of NEW LIFE HOMOEOPATHIC CLINIC in 1952. Dr. Mohammad Idrees is the father of Dr. Mohammad Ilyas, Dr. Mohammed Tariq, Dr. M.M. Siddiqui and grandfather of Mr. Faizan Mohammad, Mr. Mohammad Zaki, Mrs. Saba Jabin. Mr. Faizan Mohammad, Mr. Mohammad Zaki and Mrs. Saba Jabin are directors in the defendant's Company. Dr. Idrees practiced Homeopathy for around 53 years in his clinic under the trade mark NEW LIFE HOMOEOPATHIC CLINIC with device of leaf, till his death in the year 2005. Dr. Idrees adopted, established, used and popularized the trademark "NEW LIFE" with the device of leaf for Homeopathic clinic and medicines.

23. Mr. Bachawat submits that in the year 1970, Late Dr. Mohammad Ilyas who was the first son of Late Mohammad Idrees, established a Homeopathy clinic cum retail shop under the name and style of NEW LIFE HOMOEOPATHIC STORE with the device of leaf in order to carry on the legacy of his father Dr. Mohammad Idrees. Dr. Ilyas opened more clinics within the retail shops being run by the family members of Dr. Ilyas under the trade mark and trade name "NEW LIFE" with

device of leaf. He submits that in the year 1995, Late Dr. Ilyas established the plaintiff Company namely New Life Laboratories Private Limited along with his wife Mrs. Ishrat Begum and his three sons, namely, Dr. Mohammad Zakariya, Mohammad Zaki and Salman Mohammed as directors of the Company. In the year 2003, the other sons of Dr. Ilyas namely Mohammad Zaheer, Mohammed Azam and Faizan Mohammad were added as directors along with Mrs. Shagufta Begum (wife of Md. Zakariya) and Mrs. Saima Zaki (wife of Mohammad Zaki).

24. Mr. Bhachawat submits that all the family members of Dr. Idrees had also opened their retail shops cum clinics including his two other sons, namely, Dr. Mohammad Tariq and Dr. M.M. Siddiqui and their families under the trade mark and trade name "NEW LIFE" at various places at Bhopal either as proprietorship or partnership amongst themselves and used to sell medicines manufactures by the plaintiff company and other companies. Mr. Faizan Mohammad who is one of the directors of the defendant company had also established a retail shop cum clinic by the name of NEW LIFE MEDICOSE in the year 2002 as its proprietor and has been doing business of procuring and selling the medicines manufactured by the plaintiff company. The license to sell homeopathic medicines issued in favour of Faizan Mohammed in the year 2002 by the competent authority. He submits that in said license, the competent person to sell the medicines was Mr. Mohammed. Salman who is the director of the plaintiff. Another director of the defendant company, namely, Mr. Mohammad Zaki had also established a retail shop cum clinic under the trade mark NEW LIFE HOMOEOPATHIC STORE since 2017 and has also been doing business with the plaintiff.

25. Mr. Bachawat submits that after the death of Dr. Ilyas in 2013, Dr. Zakariya being the eldest brother started to create disputes between the brothers and more particularly against Mr. Mohammad Zaki and Mr. Faizan Mohammad out of personal jealousy. He submits that Mr. Mohammad Zaki, Mr. Faizan Mohammad and Mrs. Saima Zaki resigned from the plaintiff company on 31st March, 2018 unconditionally with a view to establish their own company. The fact that they would establish a new entity was made clear to all family members including the existing directors of the plaintiff. He submits that after the resignation from the plaintiff company, the eight family members of Dr. Ilyas family entered into a Memorandum of Understanding in order to divide the family properties. The said Memorandum clearly states that all six brothers will have equal shares in the plaintiff company and its factory.

26. Mr. Bachawat submits that the defendant company was incorporated on 22nd January, 2019 bearing the corporate name Dr. Ilyas New Life Homoeo and Herbals Pvt. Ltd. wherein Mr. Mohammad Zaki, Mr. Faizan Mohammad, Mrs. Saima Zaki, Mrs. Arshi Faizan, Mrs. Saba Jabin and Mr. Yaser Quraishi are the directors. In order to continue the family legacy, the defendant adopted the trademarks and on 22nd January, 2019 in respect of the manufacturing and marketing of Pharmaceuticals, medical and veterinary preparations, sanitary preparations for medical purposes, dietetic food and substances adapted for

medical or veterinary use, food for babies, dietary supplements for human being and animals, plasters, materials for dressings, material for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides and herbicides.

27. He submits that the plaintiff does not have any registration over the word mark "NEW LIFE" but only the label. The said registration is for the description of services being Trading, Marketing, Advertising and Business Management of Pharmaceutical Preparations included in class 35 and has been registered with a condition. The said fact has not been disclosed by the plaintiff. The aforesaid registration does not give exclusivity over the word mark "NEW LIFE" but only on the said label.

28. Mr. Bachawat relied upon the judgment in the case of Dhananjay Rathi Vs. Shree Vasu Steels Private Limited reported in MANU/ DE/ 3191/ 2023 and submitted that when a family name is adapted by different branches of a family from a common ancestor, one branch of the family cannot appropriate the same to the exclusion of the others. The goodwill and reputation in the trade mark shall ensure to the benefit of all the members of the family, unless a particular branch of the family has been specifically excluded.

29. Mr. Bachawat relied upon the judgment in the case of Prosanta Kumar Dutta Vs. Prosanta Shilpa Protishtan Pvt. Ltd. reported in 2014 SCC OnLine Cal 19929 and submitted that Dr. Ilyas is the adaptor of the mark "NEW LIFE", this does not take away the right of the defendant from using the same mark. All the directors of the plaintiff and the defendant are related to Dr. Ilyas.

30. Before filing of the present suit, the plaintiff had initially filed a suit before the Delhi High Court being CS (COMM) No. 323 of 2023 (NEW LIFE LABORATORIES PRIVATE LIMITED Vs. DR. ILYAS NEW LIFE HOMEO & HERBALS PVT. LTD & ANR. in which the plaintiff has declared Dr. Idrees Family Business Chart and Dr. Mohammed Ilyas Family Business Chart which are as follows:

DR. IDREES FAMILY BUSINESS CHART

S.N.

Proprietor/ Partners Name

Relationship

Name of the Firm

Year of Establishment

1.

Dr. Idress (Expired in 2005)

Grandfather

Homeopathic Practitioner

2.

Dr. M. Ilyas (Expired in 2013)

Father

New Life

Homoeo Store

1970 (Now

Closed)

3.

Late Mohd. Owais

Uncle-1

No Business in the Name of New Life

4.

Late Mohd. Tahir

Uncle-2

No Business in the Name of New Life

5.

Dr. M. Tariq

Uncle-3

New Life

Ayurvedic Store

1993

6.

Mohd. Anas Siddiqui

Uncle-4

Dr. Idrees

Homoeo Pharmacy

7.

Dr. M. Mugees Siddiqui

Uncle-5

New Life Homoeo Cure (Clinic)

1997

8.

Mohd Almas Siddiqui

Uncle-6

No Business in the Name of New Life

9.

Late Arifa Siddiqui

Aunt-1

No Business in the Name of New Life

10.

Shaheen Siddiqui

Aunt-2

No Business in the Name of New Life

11.

Yasmeen Siddiqui

Aunt-3

No Business in the Name of New Life

12.

M. Tayyab

S/o Dr. M. Tariqu

New Life Ayurvedic & Homoeopathic

Store

2022

DR. M. ILYAS FAMILY BUSINESS CHART

S. No.

Name

Relationship

Establishment

Year

1.

Dr. M. Zakariya

S/o Dr. M. Ilyas

New LIfe Homeo Centre

1988

New LIfe Era

2010

2.

M. Zaki

S/o Dr. M. Ilyas

German Homoeo Remedies

1997

New Life Homoeopathic Store

2017

3.

Dr. M. Salman

S/o Dr. M. Ilyas

New LIfe Medical Store

1996 (Now

Closed)

New Life Homeo Store

2017

4.

M. Faizan

S/o Dr. M. Ilyas

New LIfe Medicos (partnership firm till 2017)

2002

New Life

Homoeopaths (Partnership firm)

2017

5.

Dr. M. Zaheer

S/o Dr. M. Ilyas

New Life Homoeo Distributor (partnership firm)

2011

New Life Medicos (withdraw) from partnership)

2002-2017

6.

Mohd. Azam

S/o Dr. M. Ilyas

New Life Homoeo Place

2011

New Life Homoeo Distributor (Partnership Firm)

2011

7.

Saba Zabin (lives in Dubai)

D/o Dr. M. Ilyas

New Life Care

2022

8.

Saima Zaki

W/o M. Zaki

New Pharmacy Life

2020

9.

Faiz Zakariya

S/o Dr. M. Zakariya

New Life Homoeo World

2021

10.

Mrs. Ishrat Begum

Dr. M. Zakariya
Mrs. Shagufta Begum
Dr. M. Salman
Rimsha Zakariya
Mohd. Zaid Zakariya
Mohd. Faiz Zakariya
W/o Dr. M. Ilyas
S/o Dr. M. Ilyas
W/o. M. Zakariya
S/o. Dr. M. Ilyas
D/o. Dr. M. Ilyas
S/o. M. Zakariya
S/o. M. Zakariya
New Educational Society Life
1987
11.
Mrs. Ishrat Begum
Dr. M. Zakariya
Mrs Shagufta Begum
Dr. M. Salman
Dr. M. Zaheer
Mohd. Azam
W/o Dr. M. Ilyas
S/o M. Ilyas
W/o. M. Zakariya
S/o Dr. M. Ilyas
S/o Dr. M. Ilyas
S/o Dr. M. Ilyas
New Life Lab. Pvt. Ltd.
1995

12.

M. Zaki

M. Faizan

Saba Jabin

Saima Zaki

Arshi Faizan

Yasir Quraishi (Lives in Dubai)

S/o Dr. M. Ilyas

S/o Dr. M. Ilyas

D/o Dr. M. Ilyas

W/o. M. Zaki

W/o. M. Faizan

H/o. Saba Jabin

Dr. Ilyas New Life Homoeo & Herbal Pvt. Ltd.

2019

31. Dr. Mohammed Mugees Siddique who is from the branch of Dr. Idrees has affirmed an Affidavit before the Notary Public on 2nd September, 2024 stating as follows:

"AFFIDAVIT

I, Dr. MOHD. MUGEES SIDDIQUI about 52 years, S/o Late Dr. Mohd. Idrees, R/o 53, Prince Colony, Idgah Hills, Bhopal do hereby solemnly affirm and declare as under:

1. That I am one of the sons of Dr. Idrees and I am uncle of the directors of the plaintiff and defendant companies. Dr. Ilyas was my elder brother. I am aware of the earlier case filed in the Delhi High Court by the plaintiff against the defendant and have recently become aware of the present suit.

2. I say that my father Dr. Idrees had adopted and started using the trade mark NEW LIFE HOMOEEO CLINIC in 1952 when he practised homoeopathy for 52 years till his death. The said clinic continued for a considerable period of time.

3. That later in the year 1970 my elder brother Dr. Ilyas opened his clinic under the trade mark NEW LIFE HOMOEEO STORE in Bhopal where he practised homeopathy. His Registration No. is 5939 as per the State Homoeopathy Council Register. Thereafter he opened several other Homeopathic clinics inside the shops being run by the family members of Dr. Ilyas.

4. I say that I started my homeopathy practise in the year 1996 with my father under the name New Life Homoeo Cure. I also opened a new clinic of homeopathy in the name New Life Homeo Clinic in the year 2023 in Bhopal.

5. I say that the trade mark and trade name NEW LIFE has been in use by all the family members of Dr. Idrees including all his sons namely Dr. Ilyas, Dr. Md. Tariq and myself Dr. Mohd. Mugees Siddiqui and their children as partners/proprietors for running their retail/wholesale shops for the past few decades. I say that as on date there are around 20 retail shops cum clinics being run by the members of the family of Dr. Idrees selling pharmaceutical medicines without any objection by anyone in the family under the trade mark and trade name NEW LIFE. Everyone in the family of Dr. Idrees is well aware including myself that Mohd. Faizan is running his shop cum clinic under the name NEW LIFE MEDICOS since 2002 and Mohd. Zaki under the name NEW LIFE HOMOEOPATHIC STORE since 2017. Some of the shops are next to each other.

6. I say that the trade mark and trade name NEW LIFE is a family owned trade mark in which every member of the family of Dr. Idrees has a right to use. No one can claim exclusivity over the said trade mark and trade name NEW LIFE to the exclusion of other family member(s) and every member of the family is well aware of this understanding. There has been no objection whatsoever in the last several decades between the family members.

7. I say that I have gone through the plaint and more particularly paras 5 to 7 of the plaint. I say that the contents of paras 5 to 7 of the plaint are absolutely incorrect wherein it has been stated that Dr. Ilyas permitted his relatives and other sons of the said Dr. Idrees, i.e. the brothers of Dr. Ilyas including myself to open outlets/clinics with the trade mark and trade name "NEW LIFE" on sharing of profits accruing from such outlets with the Dr. Ilyas. I say that there has never been such understanding with Dr. Ilyas and in fact there has been no such understanding between any of the family members of Dr. Idrees and there has never been any sharing of profits as claimed by the plaintiff Plaintiff is put to challenge to show any such sharing of profits.

8. I say that I have deposed the present affidavit out of my free will after carefully going through the contents of the same thoroughly. The contents of this affidavit have also been explained to me in Hindi also. I say that I am of sound mind and have not been coerced or influenced by anyone to depose the present affidavit. I say that above is the factual position with respect to the trade marks and the business of the family of Dr. Idrees.

9. further say that I am willing to appear physically/virtually before the Court.

DEPONENT."

32. In the case of Shri Ram Education Trust vs. SRF Foundation and Ors. reported in 2016 SCC OnLine Del 472 wherein the Delhi High Court held that:

"15. The Plaintiffs have not been able to prima facie show that they are entitled

to use the family name to the exclusion of the Defendant. Both the brother having common lineage, prima facie have common rights and cannot exclude the other. It is not disputed that the name SHRI RAM was first used by Late Sir Shri Ram, who established educational institutions such as Shriram College of Commerce, Lady Shriram College for Women, Shriram Institute for Industrial Research etc. The name SHRI RAM was adopted by the family in relation to their respective endeavours.

16. When the name SHRI RAM has admittedly been first adopted by the grandfather of the parties, the plaintiffs cannot appropriate the same to the exclusion of the defendant. The goodwill and reputation in the trademark adopted by the grandfather shall enure to the benefit of all the heirs, unless something to the contrary is shown so as to exclude the other heirs. One member of the family cannot, without something more being shown to the contrary, claim exclusive ownership of the mark. All the heirs of the person who first adopted a mark and put the same to use and earned goodwill and reputation shall, prima facie, have equal rights to adopt and use the same. Something more than mere prior adoption by one of the heirs would have to be shown so as to extinguish the rights of the other heirs."

33. In the case of Dhananjay Rathi Vs. Shree Vasu Steels Private Limited reported in MANU/DE/3191/2023 wherein the Delhi High Court relied upon the judgment in the case of Shri Ram Education Trust (supra) and held that :

"25. In Shri Ram Education Trust v. SRF Foundation & Anr., MANU/DE/0181/2016, a Division Bench of this Court had held that when a family name is adopted by different branches of a family from a common ancestor, one branch of the family cannot appropriate the same to the exclusion of the others. The goodwill and reputation in the trade mark shall enure to the benefit of all the members of the family, unless a particular branch of the family has been specifically excluded. Merely because one branch of the family was the prior adopter of the mark, the same would not extinguish the rights of the other family members. Therefore, in the present case, the earlier registration of the mark RATHI in favour of K.L. Rathi would not make any difference."

34. In the present case, as per the family business chart of Dr. Idrees and Dr. Mohammed Ilyas disclosed by the plaintiff (supra), it reveals that since the life time of the grandfather of the plaintiff, namely, Dr. Idrees business of Homeopathy is being carried out. The documents disclosed by the defendant issued by the office of the Tax Collector in the year 1975, the business was in the name of Dr. Idrees and show cause notices were issued to Dr. Idrees through New Life Clinic, Bhopal.

35. The plaintiff is claiming that the plaintiff is the registered proprietor and the defendant is not. The mark of the plaintiff is registered being Registration No. 2477030, in Class 35 with effect from 12th February, 2013 and details of the user are shown as 1st April, 1970. The said registration has been granted to the

plaintiff with the condition that "THE MARK SHALL BE LIMITED TO THE COLOURS AS SHOWN IN THE REPRESENTATION ON THE FORM OF THE APPLICATION".

36. The plaintiff on its website www.newlifehomoeopathy.com admitted that Dr. Idrees to be the founder of the plaintiff which reads as follows:

37. In paragraphs 19 and 20 of the suit filed before the Delhi High Court, the plaintiff has made the statement that:

"19. That the Plaintiff has been in the course of trade and business using its said trade name and/or said trademarks as proprietor thereof continuously, commercially, openly, exclusively and to the exclusion of others, in the course of trade without any interruption or interference from any corner whatsoever and has built up envious, enormous and valuable trade, goodwill and reputation in respect thereof.

20. That the Plaintiff is the proprietor of the said trademarks/trade name in respect of said goods/services on account of its prior adoption and senior, continuous user thereof. The said business being carried on by the Plaintiff under its said trade name and/or trademarks is very extensive one and the goods and the business there under are sold and distributed widely in Indian subcontinent. The public at large, homoeopathic doctors associate said trade name and/or trademarks with the said goods of plaintiff and plaintiff has been using the said trade name and/or trademarks exclusively and to the exclusion of others. Due to superior quality and high efficacy said goods and business there under are identified as exclusively originating from the Plaintiff company source and are identified with the Plaintiff only. The Plaintiff has been faring well far and wide and has earned comprehensive amount of goodwill and reputation."

In paragraph 5 of G.A. (Com) No. 1 of 2024, the plaintiff has made the following statements:

"5. This led to such medications and the homeopathic practice of the said Dr. Ilyas becoming immensely popular under the name and style of "NEW LIFE" and/or the logo or device . In order to capitalize on such popularity and for the purposes of further expanding profits and revenue, the said Dr. Ilyas permitted his relatives, such as, the other sons of the said Dr. Idress, i.e. his brothers to open outlets/clinics with the moniker or trade name "NEW LIFE" and the said house mark , subject to such persons sharing the profits accruing from such outlets with the said Dr. Ilyas. This furthered the good name of the said moniker or trade name/mark and increased the goodwill associated therewith, which only increased the secondary meaning that had been imparted to the said moniker or brand name "NEW LIFE" and the said house mark ."

In paragraph 11 of the affidavit-in-opposition in connection of G.A. (Com) No. 2 of 2024, the plaintiff has made the following statement:

"While it is true that no family member could claim exclusively over such mark and name, it is true and correct both in fact and in law to say that such

exclusivity can be and is claimed by the Respondent/Plaintiff, as a consequence of having registered such mark with the Learned Trade Marks Registry.”

The plaintiff has made contradictory statements in various pleadings. The plaintiff has also not disclosed any documents that Dr. Ilyas permitted his relatives including the other branches of Dr. Idrees to open outlets and clinics with the name “NEW LIFE” on a profit sharing basis.

38. The plaintiff has claimed that the plaintiff is using the said mark since 1970. In the present application, the plaintiff has disclosed invoices but the said invoices are from the year 1999 and there is no document to show that the plaintiff is using the said mark exclusively since 1970 but on the other hand, the defendant has disclosed documents to show that Dr. Idress was running the business in the name of New Life Clinic at least since 1975.

39. The judgments relied by the plaintiff in the case of Surjeet Book Depot vs. Surjeet Book Depot (P) Ltd. & Ors. (supra), Sri Narasu’s Coffee Company Ltd. vs. Narasu’s Sarathy Industries & Anr. (supra) and M/s. Power Control Appliances vs. Sumeet Machines Private Limited (supra) are distinguishable from the facts of the present case.

40. The plaintiff in paragraphs 33, 34 and 35 of GA (Com) No. 1 of 2024 has disclosed about the filing of the case before the Delhi High Court before filing of the present suit in this Court and withdrawal of the suit but the plaintiff has not disclosed the plaint, written statement filed by the defendant and the affidavit-in-reply filed by the plaintiff in the suit filed before the Delhi High Court. The defendant in their application being G.A. (Com) No. 2 of 2024 has disclosed the said documents and after going through the said pleadings, this Court finds that the plaintiff has obtained ad-interim order from this Court by suppressing materials facts before this Court. In the case of Satish Khosla vs. Eli Lilly Ranbaxy Ltd. and Others reported in MANU/DE/0763/1998, the Delhi High Court held that:

“14. Was it not obligatory on the part of the respondent to disclose to the Court that in an earlier suit filed by it, the Court had not granted any stay in its favor and if on such a disclosure having been made the Court still granted stay in favor of the respondent it could be said that the respondent had not concealed any material fact from the Court? But not mentioning anything about the Court having not granted any stay in similar circumstances in favor of the respondent in the earlier suit, it appears to us that the respondent had not only concealed material facts from the Court but had also tried to over reach the Court. Being unsuccessful in obtaining stay in Suit No.3064/96, it was not permissible to the respondent to file the subsequent suit and seek the same relief which had not been granted to it in the earlier suit.”

41. This Court finds that the plaintiff has obtained an ad-interim order by suppressing materials facts and on completion of pleadings, this Court finds that the plaintiff has not made out any prima facie case and balance of convenience

and in convenience in favour of the plaintiff.

42. Considering the above, the interim order granted on 19th August, 2024 which is extended from time to time is hereby vacated.

43. G.A. (Com) No. 1 of 2024 is dismissed and G.A. (Com) No. 2 of 2024 is allowed.

Later :

After the order passed by this Court, Counsel for the plaintiff prays for stay of operation of the order. Counsel for the defendant raised objection.

Considered the submissions made by the Counsel for the parties.

Prayer for stay is refused.