



2025:DHC:5672



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

% *Date of decision: July, 11, 2025*

+ **C.O. (COMM.IPD-TM) 101/2021**

MOHSIN DEHLVI

.....Petitioner

Through: Mr. Amique Khalid, Mr. Ridhima Goyal, Ms. Ruchi Gusain and Mr. Affan, Advs.

Versus

SH. MASOOD UMAR AND ANR.

.....Respondents

Through: Mr. Nishant Gautam, CGSC for R-2 (Through VC)

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. The present petition, initially filed before the Intellectual Property Appellate Board, New Delhi, has been received on transfer later.
2. The petitioner, *vide* the present petition under *Section(s) 47 and 57* of the Trade Marks Act of 1999¹, seeks removal/ rectification of the impugned trademark 'DEHLVI' registered in the name of respondent no.1 *vide* trademark application no.3153036 under *Class 30*.
3. As per petitioner Mr. Mohsin Dehlvi, though he is a Unani practitioner who started his business of manufacturing and selling Unani and Ayurvedic medicines alongwith other medicinal preparations under the name and style of 'Shama Remedies Pvt. Ltd' in the year 16.03.1994 however, his relation to the word 'Dehlvi' dates back to 1940s, when his

¹ *hereinafter referred to as 'the Act'*



2025:DHC:5672



grandfather, who initially ran a business of media and publishing, in order to show his loyalty to the city of Delhi, adopted the surname 'DEHLVI'. Furthermore, the word 'DEHLVI' as a surname, which is an Urdu word for Delhi/ Dilliwalla, was first coined by the petitioner's grandfather before the partition and has been appearing in the publications of Shama and Sushma magazines, a publication run by the petitioner's grandfather in the 1940s. Subsequently, the petitioner's grandfather, having taken an interest in Unani and Ayurvedic medicine, took over Bada Dawakhana in the year 1953 from Hakim Gulam Kibriya Khan and renamed it to Shama (U&A) Laboratories in the year 1956, which gained popularity over the years and became a household name in India for Unani and Ayurvedic medicine.

4. The petitioner herein is the Managing Director of M/s. Dehlvi Remedies Pvt. Ltd. (earlier known as Shama Remedies Pvt. Ltd.), a company incorporated under the Companies Act, 1956, in the year 1995, after dissolution of the partnership firm M/s. Shama (U&A) Laboratories. Further, the petitioner is a registered Unani practitioner holding a valid and subsisting license obtained from the Authority of State Council of Unani Medicine, West Bengal bearing no.4712 and is engaged in the business of manufacturing and sale of Unani medical and pharmaceutical preparations across India. The petitioner, also holds over 300 patent and proprietary Unani preparations and medicine such as syrups, semi-solids and solids under the banner of M/s. Dehlvi Remedies Pvt. Ltd.

5. For carrying on with his business activities under the the trademark 'DEHLVI', the petitioner has, upon application, been granted registration for the said trademark under *Class(es)* 3 and 5 in India, which have been continuously and uninterruptedly used ever since its adoption in the year



2025:DHC:5672



1994. Furthermore, the petitioner also holds registration of an artistic logo of Dehlvi bearing registration no.A54093/97, which too is valid and subsisting under the Copyright Act, 1957.

6. The petitioner has also been making significant investments *qua* advertising of its products under the said trademarks and generated considerable revenue. In fact, over the years, the petitioner's trademark 'DEHLVI' has garnered formidable consumer recognition, developed substantial reputation and goodwill in the domain of Unani medical and pharmaceutical preparations.

7. In the meanwhile, the respondent no.1, an individual trading under a proprietorship concern namely 'Exotique Concepts' at 117, New Rajdhani Enclave, Vikas Marg, Delhi-110 092 and proprietor of the impugned trademark 'DELVI' bearing registration no.3153036 under *Class 30* for the purpose of dealing in Coffee, Tea, Cocoa, Sugar, Rice, Tapioca, Sago, Artificial Coffee, Flour and preparations made from Cereals, Bread, Pastry and Confectionery, Ices, Honey, Treacle, Yeast, Baking-Powder, Sah, Mustard, Vinegar, Sauces (Condiments), Spices and Ice. It is noteworthy that during that period, the petitioner herein, was already a subsisting registrant/ owner of the trademark 'DEHLVI' *vide* registration nos.663040 and 663043 both dated 20.04.1995 in *Classes 3* and *5* respectively of the Act.

8. Learned counsel for the petitioner submits that although the petitioner has been engaged in the business of manufacturing and selling Unani and Ayurvedic medicines alongwith other medicinal preparations under the name and style of M/s. Dehlvi Remedies Pvt. Ltd. since the year 1995 however, the relation to the word 'DEHLVI' dates back to 1940s,



when his grandfather coined and adopted 'DEHLVI' surname.

9. Learned counsel for the petitioner then submits that adoption of the trademark 'DELVI' by the respondent no.1 is *mala fide* as the entire trademark of the petitioner has been incorporated by the respondent no.1 and the only difference between the said trademarks is omission of the alphabet 'D'. In fact, the trademark 'DELVI' of the respondent no.1 is conceptually, visually and phonetically similar to the trademark 'DEHLVI' of the petitioner.

10. Learned counsel for the petitioner further submits that although the respondent no.1 has procured registration of the trademark 'DELVI' under *Class 30* (*food products*) however, it has, under the guise of the said registration, been selling products having medicinal properties namely Delvi Aloe Vera Gel, Essential Oil, Skin Repair Gels, etc. through various online e-commerce websites such as Amazon and Facebook, which is beyond the scope of *Class 30*.

11. Learned counsel for the petitioner also submits that the intention of the respondent no.1 is to ride upon the reputation and goodwill of the petitioner as the aforesaid products i.e. Delvi Aloe Vera Gel, Essential Oil, Skin Repair Gels, etc., sold by the respondent no.1 fall under *Class 5* (*pharmaceutical and medical goods*) i.e. the same class under which the petitioner holds a valid registration of the trademark 'DEHLVI', which cannot be allowed to continue as the petitioner is the prior adopter as also the prior registrant of 'DEHLVI' trademark.

12. In view of the foregoing submissions, the petitioner prays for removal/ rectification of the impugned trademark 'DELVI' of the respondent no.1 bearing registration no.3153036 from the register of



Trade Marks.

13. Learned counsel for respondent no.2 appearing through video conferencing submits that since the respondent no.2 is a proforma party hence, no response/ submissions are required on its behalf.

14. This Court has heard the learned counsel for the petitioner and has also gone through the documents on record.

15. Before delving into the factual matrix, records reveal that though the respondent no.1 was represented by one of the representative before this Court on 06.03.2024, and thereafter for the past *six* consecutive dates, there is no representation for and on its behalf. So much so, the said respondent no.1 has also not filed a response/ reply despite being granted repeated opportunities *vide* orders dated 24.04.2023, 18.07.2023, 06.10.2023. Thus, the right of respondent no.1 was closed *vide* order dated 04.12.2023.

16. Since the respondent no.1 has not filed any response to the averments raised by the petitioner in the present petition, as such there being no specific or even general denial of any of the pleadings made by the petitioner. As such under such circumstances, all the said averments made therein, without any response/ denials thereto, are deemed to be admitted as true.

17. Moreover, since there is no appearance on behalf of the respondent no.1 today as well, the respondent no.1 is proceeded against *ex parte*.

18. As borne out from the records, the respondent no.1 is using the same trademark as that of the petitioner and even though it is not registered for products in the very same Class, but for allied and cognate goods. In fact, during the course of hearing, learned counsel for the



2025:DHC:5672



petitioner has handed over a printout of the official website of the Trade Marks Registry which reflects that the very same respondent no.1 has in the year 2021 filed a trademark application being no.4869430 in *Class 5* for registration of the very same mark 'DELVI' (label) and has surreptitiously commenced business therein as well. The same cannot be permissible since the petitioner is not only a holder of a valid and subsisting registration(s) in his name but also a prior user thereof. The respondent no.1 cannot be allowed to encroach upon the established goodwill and built-up reputation of the petitioner and his brand/ trademark 'DEHLVI'.

19. On merits, there are hardly any visible differences and/ or change noticeable to the naked eye *inter se* both the impugned mark 'DELVI' of the respondent no.1 and the trademark 'DEHLVI' of the petitioner. In fact, all that the respondent no.1 has done, has removed the alphabet 'H' from the petitioner's trademark 'DEHLVI' and retained the other alphabets as it is to come up with the impugned trademark 'DELVI'. Change of one alphabet i.e. 'H' in the word which is a registered trademark i.e. 'DEHLVI' of the plaintiff and already existing since long, in the considered opinion of this Court, is hardly a reason to call the trademark 'DELVI' of the defendant no.1 distinct.

20. Thus, what may be called distinct in the foregoing paragraph is a mere variation of an innocuous nature which can easily skip the attention and sight of a layman as they are barely noticeable/ visible to the naked eye. More so, such cosmetic and insignificant changes can barely be of any relevance or can be taken note of.



21. In fact, the impugned mark of the respondent no.1 is visually, phonetically and structurally identically and deceptively similar to that of the trademark 'DEHLVI' of the petitioner. There is thus a strong likelihood of confusion amongst the members of the general public and those belonging to the trade, more so, since there is a plausible reason for them to believe that there exists some semblance of a relation/ connection *inter se* the impugned mark 'DELVI' of the respondent no.1 with the trademark 'DEHLVI' of the petitioner. The same can be perceived as yet another variant emanating from the petitioner's trademark 'DEHLVI'.

22. In view thereof, allowing the impugned mark 'DELVI' of the respondent no.1 to subsist may prove to be fatal, more so, since the trademark 'DEHLVI' of the petitioner is already very much in existence in the Indian market since as long as 1994 whereas the impugned mark 'DELVI' of the respondent no.1 has been subsequently registered in the year 2016.

23. Lastly, since the trademarks involved herein pertain to products falling under *Class 5* i.e. involving pharmaceutical preparations, this Court has to exercise extreme care and caution as any likelihood of confusion in the minds of the general public and/ or members of the trade between two marks, could be severely detrimental to the public health and welfare.

24. Resultantly, the registration of the impugned mark 'DELVI' bearing registration no.3153036 under *Class 30* in the name of the respondent no.1 is liable to be taken off from the Register of Trade Marks.

25. As such, the Registrar of Trade Marks is directed to remove the entry pertaining to the application being no.3153036 for the trademark



2025:DHC:5672



‘DELVI’ in the name of the respondent no.1 from the Register of Trade Marks forthwith.

26. Accordingly, the present petition is allowed and disposed of.

27. A copy of this judgment be forwarded to the Registrar of Trade Marks for compliance.

SAURABH BANERJEE, J

JULY 11, 2025/Ab