



2025:DHC:5556-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA(COMM) 339/2025, CM APPL. 35772/2025 & CM APPL.
35773/2025

SRK MAX HOSPITAL AND ORSAppellants

Through: Mr. Rishi Kapoor, Mr. Azad
Bansala and Mr. Yash Gupta, Advocates

versus

MAX HEALTHCARE INSTITUTE LIMITEDRespondent

Through: Mr. Raunaq Kamath, Mr.
Siddhart Varshney and Mr. Yas Raj,
Advocates

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% **10.07.2025**

C. HARI SHANKAR, J.

1. This appeal assails judgment and decree dated 1 May 2025 passed by the learned District Judge (Commercial Courts)¹ whereby the learned Commercial Court has decreed CS (Comm) 475/2024², in the following terms:

“26. Suit is decreed with cost whereby:

(1) Decree for permanent injunction is passed

¹ “learned Commercial Court”, hereinafter

² Max HealthCare Institute Ltd v SRK Max Hospital & ors.



restraining the defendants, their associates and agents, directors, officers, employees, distributors, franchisee, representatives, assignees and anyone acting from or on their behalf are restrained from using impugned trademark/name MAX or any other mark identical with or deceptively similar to the Plaintiff's trademark/name "MAX", in any manner including as a part of impugned marks/names SRK MAX HOSPITAL or the domain name <https://srkmaxhospitals.com/>, amounting to infringement of plaintiff's registered trade marks.

(2) Defendants are further directed to withdraw trademark application number 6374632 in class 44 or any other application for the trademark in class 44 or any allied or cognate goods or services or any other goods or services in respect of which the plaintiff's MAX trademark is used and registered, for the mark SRK MAX HOSPITAL and/or any mark deceptively similar to the plaintiff's MAX trademark.”

2. Additionally, the learned Commercial Court has also decided applications filed by the respondent, as the plaintiff in the suit, under Order XXXIX Rule 2A of the CPC. The decision of the learned Trial Court in that regard reads thus:

“22. It was further submitted by Ld. counsel for plaintiff that the orders for payment of punitive costs were passed in Louis Vuitton Malletier Vs. Capital General Store & Ors. and Pfizer Inc. and Ors. vs. Triveni Interchem Private Limited and Ors. (supra), after the defendants had complied belatedly. It was submitted that in the instant matter, there is extensive evidence of the contempt, continuing even as on date. Owing to their disobedience, plaintiff was constrained to monitor the defendant's non-compliance at its own cost and keep the court informed. Given the healthcare services involved, it is important that no leniency is shown to the contemnors and order for punishment relying upon the orders(supra), may be passed.

23. Having discussed as above, defendants are accordingly held liable to be in contempt for disobedience of the injunction order. As the defendants have clearly committed willful and contumacious contempt of the Court within the meaning of Order XXXIX Rule 2A of the CPC, defendants have rendered themselves liable to punishment. Accordingly, application under Order



XXXIX Rule 2A CPC stands disposed of with directions to defendants to pay the plaintiff, an amount of Rs. 5,00,000/- (Rs. Five lacs only) within a period of two weeks from today. In case of non-payment of amount, defendants shall be taken into custody and detained in civil prison for a period of two weeks at Tihar Jail, Delhi. It is also directed that any further default shall entail damages in further sum of Rs. 5,00,000/- (Rs. Five lacs only) for every week of disobedience/non-compliance, in default, incarceration for one week for every default, till the absolute compliance is made.”

Re. findings and decision on application of respondent under Order XXXIX Rule 2A CPC

3. CS (Comm) 475/2024 was instituted by the respondent against the Appellant alleging that, by use of the mark “SRK MAX HOSPITAL”, for which it had also sought registration under the Trade Marks Act, 1999, the respondent had infringed the Appellant’s registered trade marks, all of which contained, as an essential part thereof, “MAX”, which were also used for healthcare services. Among the appellant’s “MAX” family of marks were MAX HOSPITAL, MAX HEALTHCARE, MAX BALAJI HOSPITAL and MAX DIAGNOSTICS. The respondent, therefore, sought a degree of permanent injunction, restraining the Appellant from using the mark SRK MAX HOSPITAL, or MAX, either as a word mark or a device mark, as well as the domain name <https://srkmaxhospitals.com/>. The suit was accompanied by an application under Order XXXIX Rules 1 and 2 of the CPC, seeking an interim injunction, pending disposal of the suit, restraining the appellants, and all others acting on their behalf, from using the allegedly infringing marks.

4. On 14 October 2024, the learned Commercial Court granted an



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ex parte ad interim injunction in favour of the respondents and against the appellants, restraining the appellants, as well as all others acting on their behalf, from using the trademark/name MAX, or any other identical or deceptively similar trademark/name, as well as the mark SRK MAX HOSPITAL and the domain name <https://srkmaxhospitals.com/>.

5. Alleging that the appellants were continuing to use the mark SRK MAX HOSPITAL in breach of the *ex parte ad interim* injunction granted by the learned Commercial Court, the respondents moved an application under Order XXXIX Rule 2A, for proceeding against the appellants in contempt.

6. Notice was issued, by the learned Commercial Court, on the Order XXXIX Rule 2A application of the respondents. Despite grant of repeated opportunities, no reply was filed, and the right to file reply to the application was closed. Time was granted to the appellants, nonetheless, if they so choose, to file written submissions, but they did not do so. The matter was listed for orders on 7 March 2025. On that date, learned Counsel for the appellants desired to address arguments, and sought a Passover, which was granted. Nonetheless, no arguments were addressed, and the conduct of the appellants was adversely commented upon, in the order passed by the learned Commercial Court on 7 March 2025.

7. Though the appellants sought to contend, before the learned Commercial Court, that they had complied with the *ex parte ad interim* injunction order, the respondents placed, on record, printouts



evidencing display and use of the mark SRK MAX HOSPITAL by the appellants even as late as on 28 April 2025. The appellants sought to submit that the written signboard of the hospital, which contained the said mark, had inadvertently not been removed, and that they would remove it within 24 hours. Nonetheless, is an admitted position that, till service, on them, of the notice issued by the learned Commercial Court on the Order XXXIX Rule 2A application of the respondents, the appellants continued to avail the benefit of the SRK MAX HOSPITAL mark through third-party e-commerce websites, and that it was only when they were served with the notice of contempt that they corresponded with the operators of the said websites, directing them to remove the infringing SRK MAX HOSPITAL mark.

8. The learned Commercial Court has, in respect of the application of the respondents under Order XXXIX Rule 2A, observed as under:

“7. Pertaining to application under Order XXXIX Rule 2 (A) CPC, it was submitted by Ld. counsel for plaintiff that use of the trademark MAX including as a part of the impugned trade marks SRK MAX HOSPITAL by the Defendants after October 30, 2024 constitutes wilful disobedience thereof and amounts to contempt of court. In the first week of December 2024, i.e. more than 7 weeks after the grant of the interim injunction and about 5 weeks after the interim injunction became operational, plaintiff conducted inquiries to check if Defendants are complying with the court's order. The enquiries revealed that Defendants continued to extensively use the impugned and enjoined trade mark MAX including as a part of the impugned marks SRK MAX HOSPITAL etc. and the domain name <https://srkmaxhospitals.com/>. in blatant and wilful disobedience of the injunction order.

8. Screenshots dated December 4, 2024, of the Defendants' website hosted at <https://srkmaxhospitals.com/> and social media page dated December 3, 2024 were also filed alongwith the application, evidencing the continuous contumacious use of the impugned mark. Subsequent thereto, printouts of the defendants' website reflecting the flouting of the injunction order passed by this



Court as on 07.03.2025 as well as printout of the compilation and booking confirmation for appointment of hospital of defendant as well as snapshots reflecting the display and user of the impugned name by the defendants as on 28.04.2025 were also filed on record by plaintiff . Counsel for defendant was also shown the live website from the laptop of counsel for plaintiff, evidencing the continuous infringement.

9. It was further the submission of Ld. counsel for plaintiff that it is well settled that the threshold of judicial scrutiny required in the field of healthcare is considerably higher than in other fields owing to the potential harm resulting from the high degree of confusion bound to arise owing to the identity between conflicting marks. The use of the impugned mark SRK MAX HOSPITAL, the domain name <https://srkmaxhospitals.com> by the Defendants, despite the operation of an injunction order shortly on the heels of a pandemic, is extremely detrimental and prejudicial to the distinctive character and repute of the Plaintiff's reputed trade mark and name MAX and defendant's wilful disobedience of the orders of this Court ought not to be tolerated.

15. At the cost of repetition, it may be noted that injunction order was effective w.e.f. 30.10.2024. Even if the contention of defendants is accepted on record that lack of technological expertise/unforeseen technical fault prevented them from timely compliance, it was counsel for defendants himself who submitted on record with regard to absolute compliance of injunction order as on 07.03.2025. Plaintiff had placed on record printouts of the payment receipt, booking page and booking confirmation of defendant's hospital under the infringing mark 'SRK MAX' as on February 12, 2025 . Printouts of the defendants' website and social media pages reflecting the flouting of the injunction order dated 07.03.2025, thereafter of 27.03.2025 were also filed on record by plaintiff .

16. Defendants were still found using the impugned mark i.e. SRK Max Hospital as displayed outside the hospital. Snapshots of the same alongwith newspaper clipping dated 08.04.2025 were placed on record followed by similar snapshots dated 28.04.2025. Defendants apparently continue to be in the blatant and flagrant violation of the injunction order. So much so, despite the submission of counsel for defendant to file the compliance affidavit within 24 hours, same has not been filed on record. Today, compliance report on behalf of defendants has been filed on record alongwith screenshot of the website and snapshots of the hospital, taken on 29.04.2025. From the snapshots, it is visible that from the



words SRK MAX HOSPITAL on display board and display on walls, letters for word 'MAX' have been taken out and at other places, word 'MAX' has merely been hidden with Correction/White Fluid, which seems to be superficial exercise, with no genuine efforts to comply with the injunction order in letter and spirit.

17. Ld. Counsel for plaintiff submitted that even as on today i.e. 01.05.2025, website/facebook page of defendants is showing SRK MAX HOSPITAL. Printout of the defendant's social media page and listing on third website as on 01.05.2025 placed on record, reflecting the non-compliance on the part of the defendants. It was submitted by Ld. Counsel for plaintiff that defendants are operating on social media, as is visible from today's documents placed on record under the impugned name. Ld. Counsel for defendants submits that the site has been redirected to SRK GROUP as algorithm redirects to same site, despite the fact that they have removed it from every social media platform.

23. Having discussed as above, defendants are accordingly held liable to be in contempt for disobedience of the injunction order. As the defendants have clearly committed willful and contumacious contempt of the Court within the meaning of Order XXXIX Rule 2A of the CPC, defendants have rendered themselves liable to punishment. Accordingly, application under Order XXXIX Rule 2 A CPC stands disposed of with directions to defendants to pay the plaintiff, an amount of Rs. 5,00,000/- (Rs. Five lacs only) within a period of two weeks from today. In case of non-payment of amount, defendants shall be taken into custody and detained in civil prison for a period of two weeks at Tihar Jail, Delhi. It is also directed that any further default shall entail damages in further sum of Rs. 5,00,000/- (Rs. Five lacs only) for every week of disobedience/non-compliance, in default, incarceration for one week for every default, till the absolute compliance is made.”

9. In so far as the decision on the application of the respondent under Order XXXIX Rule 2A of the CPC is concerned, Mr. Rishi Kapoor, learned counsel for the appellant candidly acknowledges that, even while submitting that the appellant had taken steps to remove all other physical representations of the alleged impugned SRK MAX



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HOSPITAL mark, in so far as the use of the mark on third party websites was concerned, the communications with the persons operating the said website took place only after the respondent had filed an application under Order XXXIX Rule 2A of the CPC alleging contempt.

10. On the Court pointing out that, in that event, there is no substantial error in the judgment of the learned Commercial Court, in so far as it decides the application of the respondent under Order XXXIX Rule 2A of the CPC against the appellant, Mr. Rishi Kapoor has left it to the decision of the Court even while pressing his challenge to the judgment and decree in the suit on other issues.

11. We note that the learned Commercial Court has, in its decision on the application of the respondent under Order XXXIX Rule 2A of the CPC, only mulcted the appellant with ₹ 5 lakhs, to be paid to the respondent. In the aforementioned circumstances, and the observations of the learned Commercial Court, reproduced *supra*, no legitimate exception can be taken to the said decision with which, therefore, we do not propose to interfere.

12. However, the time for deposit the amount of ₹ 5 lakhs shall stand extended by two weeks from today, failing which the consequences envisaged in the impugned order would follow.

13. The challenge to the impugned order, insofar as it disposes of the Order XXXIX Rule 2A application of the respondent, stands disposed of accordingly.



Re. judgment and decree of injunction

14. In so far as the decree of injunction is concerned, we note that the suit has been decreed under Order VIII Rule 10³ of the CPC. Order VIII Rule 10 of the CPC applies where the defendant fails to file its written statement within the time granted by this Court.

Rival Contentions

15. Mr. Kapoor's contention is that an application had been filed by the appellant before the learned Commercial Court seeking condonation of delay in filing written statement. While accepting that delay beyond 120 days cannot be condoned, his submission is that if the date of service on his client of summons in the suit as contended by him is to be accepted, the written statement cannot be said to have been filed beyond 120 days.

16. Mr. Kamath, learned counsel for the respondent, points out in this regard, by order dated 7 March 2025, the learned Commercial Court had permitted all applications filed by the appellants, including the application for condonation of delay, to be taken on record only subject to payment by the appellant of costs of ₹ 50,000/-, which have not been paid till date. As such, submits Mr. Kamath, there was, in fact, before the learned Commercial Court, no application for

³ 10. **Procedure when party fails to present written statement called for by Court.** – Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.



condonation of delay in filing the written statement.

17. In response, Mr. Kapoor seeks to submit that payment of costs was only pertaining to the reply filed by the appellant to the application of the respondent under Order XXXIX Rule 2A of the CPC. He further submits that, in fact, an application has been filed by the appellants before the learned Commercial Court, seeking reduction of the costs of ₹ 50,000/-, imposed on 7 March 2025.

18. Mr. Kamath points out, in response, that the application for reduction of costs was also dismissed by the learned Commercial Court on 27 March 2025, and that order remains unchallenged.

Analysis

19. We may note, at the very outset, that Mr. Kapoor's submission that the costs of ₹ 50,000/-, imposed by the order dated 7 March 2025, was only to take on record the appellants reply to the respondents application under Order XXXIX Rule 2A of the CPC, cannot be accepted. The learned Commercial Court has, in the said order, noted the fact that *no written statement* or reply to the Order XXXIX Rule 2A application of the respondent had been filed by the appellants despite repeated opportunities. We may reproduce, in this context, the following paragraph from the said order, which includes the direction for payment of ₹ 50,000/- as costs:

“Accordingly, vide order dated 13.01.2025, matter was listed for orders, closing the right of defendants to file reply to application U/o 39 Rule 2A CPC, still granting liberty to defendants to address



arguments and to file written submissions within three days. None of the above was done. Thereafter, since the Court was on leave, therefore, the matter was adjourned for pronouncement of order for today. Subsequent to last date of hearing i.e. on 19.02.2025, defendant e-filed written statement, reply to application U/o 39 Rule 2A CPC as well as application U/o 39 Rule 4 CPC. Application seeking condonation of delay in filing of written statement and an application for recall of order dated 13.02.2025 also filed. Having noted the conduct of the defendants, the Court is constrained to note that defendants have much of the audacity not to comply with the directions, not to follow time lines, not to file reply to the application, not to address arguments as well as not availing the liberty to address arguments while the matter was listed for orders. Today on the date of pronouncement of the order, defendants seek indulgence of the Court to the abovesaid. At the same time, it is also submitted on behalf of defendants that they have complied with the injunction order. Though, Ld. Counsel for plaintiff today morning has placed on record printouts of the defendants' website reflecting the flouting of the injunction order passed by this Court even as on today. In these circumstances, though the conduct of defendants does not entitle them any indulgence, nevertheless, considering that all the applications have now been filed on record as well as reply to the application U/o 39 Rule 2A CPC with a view to provide opportunity to defendants to put their version on record, applications are taken on record for consideration, subject to payment of cost of Rs. 50,000/-, half of which shall be deposited with Guru Vishram Vridh Ashram, Old Age Home, State Bank of India, Account No. 10429084594, IFSC Code: SBIN 0007407, within one week. It is made clear that non deposit/non-payment of cost, applications filed on record by defendant shall not be considered and the order would be pronounced. Request of Ld. Counsel for defendant to reduce the cost is declined. Ld. Counsel for defendants submits that copies of all the applications and written statement have already been supplied to Ld. Counsel for plaintiff.”

Clearly, the direction for payment of costs of ₹ 50,000/- also included the costs for taking the application for condonation of delay on record.

20. Mr. Kapoor submits that an application had also been filed for reducing the said costs. However, we note that application was also dismissed on 27 March 2025 and no challenge has been laid against the said order.



21. That said, the proviso to Order VIII Rule 1⁴ of the CPC, as amended by the Commercial Courts Act, 2015, allows a written statement, in a commercial suit, to be filed within an extended period of 90 days beyond the ordinary period of 30 days from the date of service of summons, for reasons to be recorded in writing by the Court and on payment of costs. In case a written statement is filed within the overall period of 120 days, in a commercial suit, the general principle is that the right of the defendant to contest the suit ought not to be denied. Of course, there is an absolute proscription against extending limitation beyond 120 days from the date of service of summons.

22. Mr. Kapoor's contention is, however, that the written statement was in fact filed within 120 days of the date of service of summons. Undeniably, the appellants have not had an opportunity to argue this point before the learned Commercial Court owing, no doubt, to their own default in depositing the costs of ₹ 50,000/- imposed by the order dated 7 March 2025 and, thereafter, failing to challenge the subsequent order dated 27 March 2025, whereby the application of the appellants for reduction of costs was dismissed. We cannot, therefore, find fault with the learned Commercial Court for treating the suit as proceeding undefended.

⁴ 1. **Written statement.** – The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.



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23. Solely in the interests of justice, however, we are inclined to grant the appellants an opportunity to argue on their application for condonation of delay, subject to their complying with the direction for payment of costs of ₹ 50,000/- within 2 weeks from today. We make it clear that the appellants would not seek any adjournment on the date fixed by us. They were also not to seek any further time to deposit costs.

24. Needless to say, if the appellants comply with the direction for payment of costs, and if their application for condonation of delay is allowed, the impugned order, which has been passed under Order VIII Rule 10 of the CPC, would have to be revisited.

25. In that view of the matter, with the consent of parties, the present appeal, insofar as it challenges the impugned order dated 1 May 2025, to the extent it decrees the suit filed by the respondent under Order VIII Rule 10 of the CPC, is disposed of in the following terms:

(i) The appellants shall, within a period of two weeks from today, pay the damages of ₹ 5 lakhs awarded under Order XXXIX Rule 2A of the CPC as well as costs of ₹ 50,000/-, as directed by the learned Commercial Court in its order dated 7 March 2025, to the respondent, for which purpose the bank account details of the respondent would be provided by the respondent to Mr. Rishi Kapoor, learned counsel for the appellant. In the event of the appellant failing to do so, the impugned order shall remain as it is.



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(ii) In the event of the appellant making payment as aforesaid, the application filed by the appellant for condonation of delay shall be treated as having been taken on record and the parties would be entitled to advance arguments thereon. We make it clear that we express no opinion on the merits of the said application.

(iii) The learned Commercial Court would proceed further in accordance with law pursuant to the decision on the application for condonation of delay, and depending on its outcome.

(iv) The impugned judgment and decree is, therefore, quashed and set aside to the extent it passed a decree of permanent injunction against the appellant and in favour of the respondent. However, in case Order VIII Rule 10 of the CPC is found to be applicable, the learned Commercial Court would be within its jurisdiction to maintain the order as it stands.

26. It is only because we are of the view that the appellant should be given an opportunity to argue on the application for condonation of delay, which would, in turn, influence the applicability of Order VIII Rule 10 of the CPC, that we are passing the present order today.

27. Both sides would appear before the learned Commercial Court on 5 August 2025. Neither side is permitted to seek an adjournment.



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28. The appeal is disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JULY 10, 2025/yg