

2025:PHHC:103068



119 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3579-2023 (O&M)
Decided on:-08.08.2025

Intra Life Pvt. Ltd and others

....Petitioners..

vs.

Harish Kumar (Proprietor) M/s Trumac Healthcare

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Anand Bhushan, Advocate and
Mr.Dikshant Bhardwaj, Advocate,
for the petitioner.

Mr. Preetpal Singh, Advocate,
for the respondent.

HARKESH MANUJA J. (Oral)

1. By way of present petition, challenge has been laid to an order dated 28.04.2023 passed by the learned Additional District Judge, Panchkula, whereby an application filed at the instance of petitioners-defendants invoking Order VII Rule 11 CPC with a prayer for rejection of plaint i.e. Civil Suit No.09 of 2022, titled as "**Harish Kumar (Proprietor) of M/s Trumac Healthcare vs. Intra Life Private Limited and others**", stands rejected.

2. Briefly stating, the respondent-plaintiff filed a suit for permanent injunction restraining the petitioners-defendants from infringement of trademark namely "**Nefrotime**". Relevant paras No.4, 9 and

ii) *Pass decree of perpetual/ad interim/exparte injunction restraining the Defendants, their agents, servants, dealers, representatives and all other persons acting on their behalf from reproducing, publishing and/or visual representation in any manner of the trademark "NEFROTIME" or any other mark which is substantial reproduction of the Plaintiff's artwork in trademark "NEFROTIME" amounting to infringement of the Plaintiff's trademark in art work of the label "NEFROTIME".*

iii) *Pass decree for directing the Defendants to deliver the packaging, brochures, pamphlets, letter pads, signboards, blocks, dies, stamps, printing materials, advertisement material etc. under the impugned mark/"NEFROTIME" of the Plaintiff for the purpose of destruction/erasure.*

iv) *Pass order for costs of present suit proceedings.*

v) *Any further relief which this Hon'ble court may deem fit and proper in the facts and circumstances of the case be granted favour of the Plaintiff and against the Defendants."*

3. Upon appearance, in response, the petitioners being defendants preferred an application under Order VII Rule 11 CPC with a prayer for rejection of plaint primarily on the ground of jurisdiction. The said application was contested at the instance of respondent-plaintiff having filed reply to the same.

4. The Trial Court-cum-Additional District Judge, Panchkula vide its order dated 28.04.2023 dismissed the application preferred at the instance of petitioners-defendants. Hence, the present revision petition.

5. The short point raised on behalf of the petitioners-defendants is that even as per the plaint, as on the date of filing of the suit there was no registered trademark in the name of "Nefrotime" in favour of respondent-plaintiff and merely an application No. 5640979 under Class 5 in respect of

pharmaceutical preparations, preferred at the instance of respondent-plaintiff was pending consideration with the authorities and thus, at best the suit preferred at the instance of respondent-plaintiff was based on a cause of action of passing off rather than infringement.

5.1 Learned counsel for the petitioner while placing reliance upon Section 134 of the Trade Marks Act, 1999 (*for short, "1999 Act"*) submits that for a suit based on a cause of action of passing off, it was not maintainable before the Court of learned District Judge at Panchkula as the same was required to be filed at the place of business of the petitioners-defendants i.e. at Bangalore, where the cause of action arose with the manufacturing and sale of the pharmaceutical drugs in the name of "Nefrotime" and as such, the plaint was liable to be rejected. For reference, Section 134 of the 1999 Act is reproduced hereunder:-

"Suit for infringement, etc., to be instituted before District Court-

(1) *No suit—*

(a) *for the infringement of a registered trade mark; or*

(b) *relating to any right in a registered trade mark; or*

(c) *for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered, shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.*

(2) *For the purpose of clauses (a) and (b) of sub-section (1), a "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or*

carries on business or personally works for gain.”

6. On the other hand, learned counsel for the respondent-plaintiff submits that the suit was based on prior user of trade name “*Nefrotime*” since 20.02.2021 and during its pendency, the application made on behalf of the respondent-plaintiff for issuance of trademark in the name of “*Nefrotime*” was even accepted and thus, the suit was to be treated as being based on the cause of action of infringement rather than mere passing off and as such, the same was maintainable before the District Judge at Panchkula in terms of clause 2 to Section 134 of the 1999 Act.

6.1 Learned counsel also submits that upon conjoint reading of the plaint as well as the legal notice dated 30.09.2022 served upon the respondent-plaintiff at the instance of petitioners-defendants, it was made out that the sale/passing off by the petitioners-defendants under the trade name of “*Nefrotime*” was being carried out throughout the Country including Panchkula and thus, the respondent-plaintiff was well within its right to prefer the plaint at District Court, Panchkula and as such, the revision petition was liable to be dismissed.

7. I have heard learned counsel for the parties and gone through the paper book.

8. A perusal of the record shows that undisputedly, the plaint preferred at the instance of respondent-plaintiff was required to be treated as being based on a cause of action of passing off as on the date of presentation of the plaint he was not having registered trademark of “*Nefrotime*” in his name, therefore, for the purposes of territorial jurisdiction, the suit was not governed by Section 134(2) of the 1999 Act but was to be regulated under

Section 20 of the Code of Civil Procedure, 1908, which is reproduced hereunder:-

“20. Other suits to be instituted where defendants reside or cause of, action arises.- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.”

8.1 Combined reading of the plaint and the legal notice dated 30.09.2022 served at the instance of petitioners-defendants upon the respondent-plaintiff, which has been appended along with the plaint as Annexure P-9 shows that the petitioners-defendants were doing the business of selling and supplying medicines under the trade name of “Nefrotime” across the Country and the relevant contents from the notice dated 30.09.2022 are extracted hereunder:-

“ XX XX XX XX

Our Company’s Background

INTRA LIFE PRIVATE LIMITED is one of the best leading Indian Pharmaceutical Manufacturing Company. Our company is in the business of supplying a wide range of medicines

to the Indian Army, Apollo Group of Hospitals, Renowned Private and Government Institutions, Reputed healthcare professionals and Specialists through their channel partners across the Country.....

9. Thus, in view of the aforesaid, once the petitioners-defendants Company was running the business across the Country for supplying their wide range of medicines in the trade name of “Nefrotime” and was even selling the products through their channel partners; for the purposes of adjudication of application under Order VII Rule 11 CPC, at this stage and for prima facie opining on the issue of territorial jurisdiction, it can be safely recorded that a part of cause of action arose in Panchkula as well, where allegedly the deception has been caused to the consumers by the offending products of the petitioners-defendants resulting into injury to the respondent-plaintiff.

10. In view of the above, at this stage, it would be appropriate to afford an opportunity to the respondent-plaintiff to lead evidence on the issue of territorial jurisdiction, rather than, to invoke Order VII Rule 11 CPC, so as to reject the plaint of the respondent-plaintiff prematurely.

10. In view of the discussion made herein-above, the present petition is dismissed. Needless to say, the observations made herein above are only prima facie and not prejudice the contentions of either of the parties in the trial.

11. Pending applications, if any, also stand disposed of.

08.08.2025
sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No