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

Reserved on: 23 August 2023
Pronounced on: 28 August 2023

+ CS(COMM) 570/2023, I.A. 15595/2023 & I.A. 15596/2023

**SILVERMAPLE HEALTHCARE SERVICES PRIVATE
 LIMITED AND OTHERS** Plaintiffs

Through: Mr. J. Sai Deepak, Mr. Tushar
 Singh, Ms. Akshra Arshi, Mr. R. Abhishek,
 Mr. Nikhil Sabri and Ms. Pankhuri, Advs.

versus

DR AJAY DUBEY & ORS. Defendants

Through: Mr. Akshay Makhija, Sr. Adv.
 with Mr. Harkirat Singh and Mr. Adarsh
 Chamola, Advs.

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

ORDER
24.08.2023

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CS (COMM) 570/2023

1. As the recital hereinafter would reveal, the present plaint raises issues that deserve serious consideration.
2. As such, let the plaint be registered as a suit. Issue summons. Summons are accepted, on behalf of the defendants, by Mr. Harkirat Singh. Written statement, accompanied by an affidavit of admission



and denial of the documents filed by the plaintiffs be filed within 30 days, with an advance copy to learned counsel for the plaintiffs who had filed application thereto, accompanied by affidavit of admission and denial of the documents filed by the defendants, within 30 days thereof.

3. List before the learned Joint Registrar for completion of pleadings, admission and denial of documents and marking of exhibits on 20 September 2023, whereafter the matter would be placed before the Court for a case management hearing and further proceedings.

IA 15595/2023 [under Order XXXIX Rules 1 and 2, CPC]

4. By this order, I proceed to decide the plaintiffs' prayer for *ad interim* injunction. As such, the order would only examine whether, *pending decision on the present application*, any *ad interim* directions are or are not required to be issued.



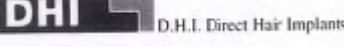



5. Though no caveat was filed by the defendants, I have permitted them to argue, through Mr. Akshay Makhija, learned Senior Counsel. The plaintiffs are represented by Mr. J. Sai Deepak, learned Counsel.

6. Being an *ad interim* order, discussion of the facts and law would necessarily be brief.

7. Plaintiff 4 possesses the following registrations under the Trade Marks Act, 1999, which are valid and subsisting and are licensed to



Plaintiff 1 for use thereof:

S. No.	Class	Registration No.	Trademark	Date of Registration
1.	10, 42	1759879		04.12.2008
2.	10, 42	1759880		04.12.2008
3.	10, 42	1759881		04.12.2008
4.	44	2046105		28.10.2010
5.	10, 16, 35, 44	2321062		24.04.2012
6.	10, 16, 35, 44	2321063		24.04.2012

8. “DHI” refers to a technique for facilitating hair growth, known as Direct Hair Implantation. The technique is stated to have been invented and developed by Mr. Konstantinos P. Giotis, founder of the DHI Global Medical Group.

9. Defendant 1 was a dermatologist, employed by Plaintiff 1 *vide* appointment letter dated 19 September 2011. His employment was last renewed by Plaintiff 1 *vide* contract dated 13 April 2022, till 30 September 2026. At the time of his employment, a Non-Competitional Confidentiality Agreement (NCCA), dated 19 September 2011, was executed between Plaintiff 1 and Defendant 1. The following clauses of the NCCA are relevant:

“ **“Confidential Information”** means information that is not



generally known to the public and that is used, developed or obtained by the First Party in connection with its Business, including but not limited to (i) products or services, (ii) fees, costs and pricing structures, (iii) designs, (iv) analysis, (v) drawings, photographs and reports, (vi) computer software, including operating systems, applications and program listings, (vii) flow charts, manuals and documentation, (viii) data bases, (ix) DHI Know-how & DHI Methods including any new development or innovation or modifications that may take place in the DHI Know-How & DHI Methods during the term of this Agreement (x) accounting and business methods, (xi) inventions, devices, new developments, methods and processes, whether patentable or non-patentable and whether or not reduced to practice, (xii) customers and clients and customer or client lists, (xiii) copyrightable works, (xiv) all technology and trade secrets, (xv) researches and development projects or results, (xvi) financial and sales information of any kind and contemplated activities (including, without limitation, leasing, distribution and sales costs and non-public pricing information), (xvii) current and prospective alliance, marketing and media partners and key individuals;(xviii) relations with its employees (including, without limitation, salaries, job classifications and skill levels and (xix) all similar and related information in whatever form. Confidential Information shall not include any information that has been published in a form generally available to the public prior to the date Second Party proposes to disclose or use such information. Information shall not be deemed to have been published merely because individual portions of the information have been separately published, but only if all material features have been published in combination;

3. Confidentiality

3.1 That Second Party acknowledges that, during his/her engagement with First Party, he/she will have direct access to and knowledge of the Confidential Information. The Second Party covenants and agrees that all such Confidential Information is and shall remain the sole property of First Party and/or its Affiliates, as applicable, and that he/she will hold in strictest confidence, and will not (except as required in the course of his/her engagement with First Party) disclose to any business, firm, entity or person, either directly or indirectly, any of the Confidential Information. The Second Party further agrees that he/she will return all such Confidential Information (regardless of how it is maintained) and any copies thereof to First Party within three days of the termination of his/her engagement with the First Party, whether



voluntary or involuntary and regardless of the reason for termination. The terms of this paragraph are in addition to, and not in lieu of any legal or other contractual obligations that the Second Party may have relating to the protection of the Confidential Information. The terms of paragraph 3.1 & 3.2 shall survive indefinitely the termination of Second Party's engagement with First Party.

4.2 From the date hereof until the date of completion of 5 [five] years from the date of the termination of Second Party's engagement with First Party [or any Affiliate, as applicable and whichever is later] (the "Restricted Period"), Second Party shall not, directly or indirectly, without the prior written consent of First Party, individually or in partnership with, as part of a joint venture with, or otherwise in conjunction in any other manner with any other entity:

- (a) Engage in any business or enterprise (whether as owner, partner, officer, director, employee, consultant, investor, lender or otherwise, that directly or indirectly competes with First Party's business or its affiliates in India or any other territory where the First Party has business interest, including but not limited to any business or enterprise that develops, markets, or sells any product or service that competes with any product or service developed, marketed or sold, or planned to be developed, marketed or sold, by the First Party or its affiliates;
- (b) either individually or on behalf of or through any third party, solicit, divert or appropriate or attempt to solicit, divert or appropriate, for the purpose of competing with any Business, any customers or patrons of any Business, or any prospective customers or patrons with respect to which First Party or any Affiliate has developed or made a sales presentation (or similar offering of services); or
- (c) advise, invest in, lend money to, guarantee the debts or obligations of, or otherwise have any other financial interest in any Competitive Business. Notwithstanding the foregoing, Second Party shall not be permitted to make any passive investments in any Competitive Business



5. Non Solicitation

5.1 No Solicitation of Personnel. Second Party acknowledges the importance of the human resources engaged and developed by the First Party and its affiliates for carrying on the Business. Accordingly, during the Restricted Period, the Second Party covenants and agrees that he/she shall not, directly or indirectly, induce or solicit or assist any third party in inducing or soliciting any of the personnel's of the First Party or its any Affiliate including but not limited to Doctors, nurses or other medical or administrative staff to leave First Party or any Affiliate or to accept engagement elsewhere.

5.2 No Solicitation of Clients and Suppliers. Second Party acknowledges the importance of the Business carried on by First Party and its Affiliates and the client and supplier relationships developed by it and the unique opportunity that Second Party has procured due to his/her engagements with the First Party and its affiliates and his/her access to the Confidential Information offers to interfere with these relationships. Accordingly, Second Party covenants and agrees that he/she shall not during the Restricted Period, directly or indirectly, contact or solicit any person who he/she knows to be a prospective, current or former client or supplier of First Party or any Affiliate for the purpose of selling to such client or buying from such supplier any Business products or services.”

10. Thus, it would be seen that photographs and reports, customers or clients’ lists and copyrightable works were all covered under the umbrella definition of “confidential information”. The NCCA also required Defendant 1 not to divulge or disclose any confidential information of Plaintiff 1 to anyone. Additionally, the NCCA forbade engagement, by Defendant 1, in any business or enterprise which directly or indirectly competed with the Plaintiff 1’s business, for a period of five years from termination of the engagement of Defendant 1 with Plaintiff 1. Clause 5.1 of the NCCA further prohibited Defendant 1 from inducing, soliciting or assisting any of the personnel



or staff of the plaintiff to leave the Plaintiff 1 or accept engagement elsewhere, and Clause 5.2 prohibited Defendant 1 from contacting or soliciting any person who was known, by Defendant 1, to have been a client of the Plaintiff 1 , for the purposes of providing any business products or services to such client, for a period of five years from termination of employment with the Plaintiff 1.

11. *Vide* email dated 28 September 2022, Defendant 1 resigned from the services of Plaintiff 1. The resignation was accepted by the Plaintiff 1 on 4 October 2022. Consequent thereupon, on 8 October 2022, a Severance Agreement was executed between Plaintiff 1 and Defendant 1. Clauses 4 and 5 of the Severance Agreement read thus:

“4) You are bound to work with the company till September 30, 2026 as per the letter agreement dated 13th April, 2022. Since you have resigned during this period, as well as frustrated the contract by making it impossible to continue engagement with the company, you are liable to pay a six months’ notice pay, as per your employment letter dated 28 August, 2021 and the “Previous Employment Contract” as defined therein. Based on your fixed compensation of 5,44,509, the amount of 6 months notice pay is ₹ 32,67,054, payable by you to the company. Based on your assurances that you will comply fully with the terms of the separation, the company is willing to waive this amount conditionally. In case you do not fully comply with the terms of separation as per this Letter, you would be liable to pay the said notice pay of Rs 32,67,054 to the Company immediately upon the demand raised by the Company.

5) You are bound by the Non-Competition and Confidentiality Agreement dated 19th September, 2011. As per clause 4.2 and clause 6 of the said agreement, you have undertaken not to perform hair transplants for a period of five years after separation from the company failing which damages of rupees to 2.50 crores are payable by you within 4 days of receipt of the notice by the company. However, we agreed to reduce this period to one year subject to all other conditions being fulfilled by you. After one



year, for the next 4 years of the agreed restriction, you will not compete directly with the company in Delhi either yourself or through any other clinic.”

12. Consequent on leaving the services of Plaintiff 1, Defendant 1 set up his own clinic in Gurgaon, carrying out transplantation by a technique titled “Direct Follice Insertion”, abbreviated to “DFI”. Defendant 1 also opened a new website www.evolvedhairindia.com and, on 3 July 2023, started a limited liability partnership enterprise under the name “Evolved Hair Restoration India” (impleaded as Defendant 2), at Gurgaon, registered as an LLP with the Registrar of Companies, Delhi. Defendant 1 is the Medical Director in Defendant 2. On the website www.evolvedhairindia.com, DFI is described as a complete care system founded after amalgamating the best practices of Follicle Unit Extraction method (FUE) and DHI. It is further stated that, though the said website does not use the expression DHI anymore, it does refer to “Direct Hair Implant”.

13. After leaving the services of Plaintiff 1, Defendant 1, submits Mr. J Sai Deepak, learned Counsel for the plaintiffs, not only breached the covenants of the NCCA and the Severance Agreement but also infringed the plaintiffs’ registered trademarks and committed various other misdemeanours. He highlights the following:

(i) Mrs. Nidhi Chaturvedi Khurana, who was working with Plaintiff 2 as Clinic Manager, resigned from the Plaintiff 2 services on 11 May 2023, on the pretext that her husband had relocated to Dubai. She was relieved on 31 May 2023.



Subsequently, however, it was learnt that she had joined Defendant 1 and was involved in providing hair transplant services under the aegis of “Evolved Hair India” of Defendant 1 at the beauty/massage parlour of Defendant 3. Seen in the backdrop of her false pretext for resigning from the services of Plaintiff 2, Mr. Sai Deepak submits that it is obvious that the services of Ms. Khurana were solicited by Defendant 1. Three other senior nurses employed with Plaintiff 1 also left Plaintiff 1 to join Defendant 1. It was learnt that Defendant 1 was making overtures to several other employees of Plaintiff 1 and 2, to similarly leave Plaintiff 1 and join him.

(ii) Abhishek Jain, a former client of Plaintiff 2, who had undergone DHI hair transplant at the Plaintiff 2’s clinic on 10 January 2021, received the following WhatsApp message from Defendant 1 on 24 June 2023:

“Dear Mr Abhishek,

Thank you for time. It was a follow-up call regarding your hair transplant procedure with Dr. Ajay Dubey. Hope your results are good. Dr. Ajay Dubey has opened his New Clinic at Sector 53, Golf Course Road, Gurgaon. For appointment or any query call at 9899424642.

Kind regards

Dr Ajay Dubey’s clinic
Evolved Hair India”

Defendant 1, similarly, called several other clients of Plaintiffs 1 and 2, asking them to visit his clinic for follow-up and review of the treatment administered by him as a member of the



Plaintiff 1's clinic.

(iii) Defendant 1 put up, on his social media webpages, and also communicated, with third parties, various disparaging comments regarding the plaintiffs, such as the following:

(a) On 28 December 2022, Defendant 1 posted, on the Instagram page of Plaintiff 1, the following message, from the Instagram account of Defendant 1:

“The nurse is clearly placing his elbow on sterile table and the doctor is not even worried... if that is even a qualified doctor... no wonder they have malpractice criminal case in Indian courts...dm me for details#dhi#fraud”

(b) On 16 July 2023, Defendant 1 uploaded the following post on his Instagram web page:

“...CEO and the doctors of DHI ... they are being investigated by the crime branch for causing folliculitis during hair transplant.. be careful with DHI... PAY SO MUCH AND HAVE SERIOUS FOLLICULITIS.”

(c) On its website, Defendant 2, which was basically the enterprise of Defendant 1, declares as under:

“HAIR RESTORATION BACKED WITH 20+ YEARS OF RESEARCH

Evolved Clinics has perfected the art of hair restoration which 2 decades of research and innovation, which is captured in its evolutionary protocols and its proprietary Direct Follicle Insertion (“DFI”) technique.

We are adept in all types of hair transplant



procedures, including hair and facial hair transplants for both men and women, as well as repair and density corrections for previous FUT, FUI and DHI surgeries.”

This declaration, submits Mr. Sai Deepak, amounts to a representation, to the public, that DHI surgeries, which were earlier conducted by Defendant 1 under the aegis of Plaintiff 1, left certain aspects such as repair and density which had to be corrected. By holding out that, in his clinic, Defendant 1 would carry out such corrections, Mr. Sai Deepak submits that Defendant 1 has not only misrepresented the actual factual position, but has also denigrated the plaintiffs, by making it appear that, after the DHI technique which the plaintiffs employed, repair and density corrections were required to be carried out.

(iv) On 21 March 2023, Defendant 1 posted the following comment on the YouTube channel of Plaintiff 1:

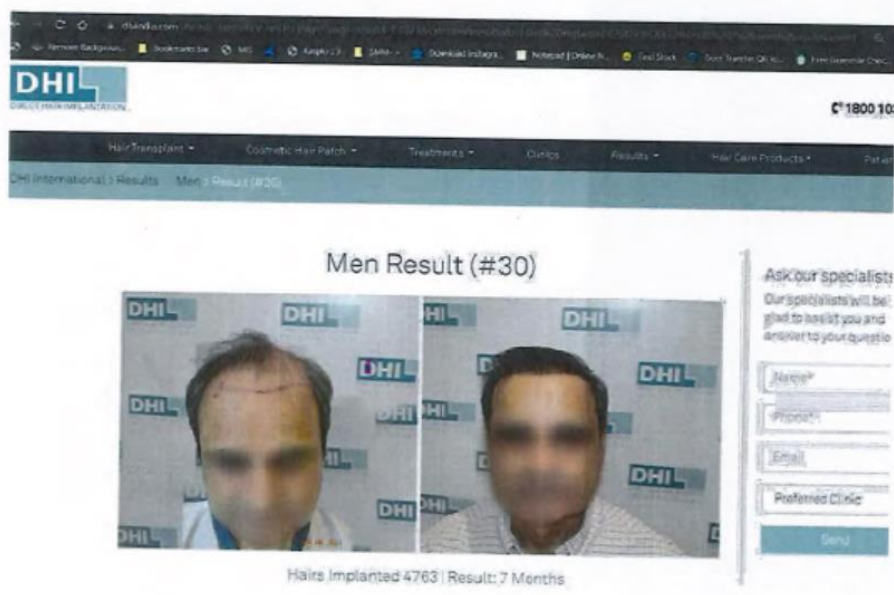
“Pure fraud is they say nobody but the doctor will touch your head ... while the medical Director performs the session ... the assistant is clearly plucking the hair.”



Mr. Sai Deepak has also referred me to emails dated 27 December 2021 and 17 February 2022, from Defendant 1, in which Defendant 1 acknowledged having written emails and inappropriate messages to employees of Plaintiff 1 level in, inter alia, false allegations and undertaking not to do so in future.

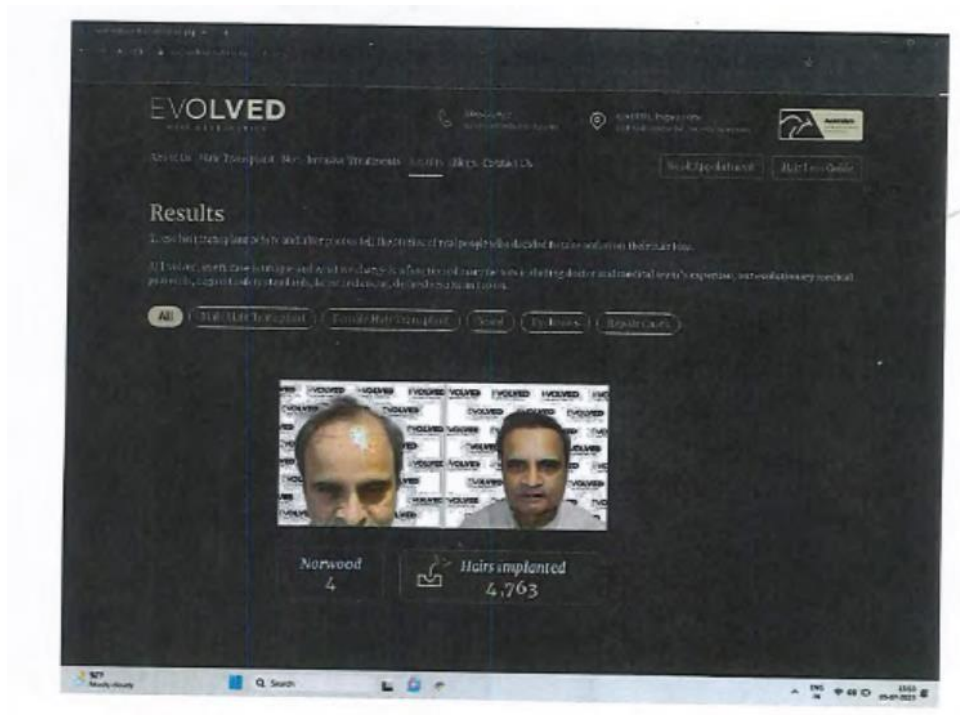
(iv) Defendant 1 also uploaded, on the “Results” section of the website of Defendant 2, morphed photographs, by altering the background, of images reflecting the status of patients of the Plaintiff 1 before and after DHI treatment, making it appear as though the results were attributable to the DFI technique of Defendants 1 and 2. By way of example, the following morphed image may be reproduced:

Original photograph – on website of the plaintiff





Morphed photograph – on website of Defendant 2



Other such similar morphed images have also been placed on record with the plaint. The use of these images, besides being fraudulent and misleading, also infringe the copyright, held by the plaintiffs, in the images which figured on the plaintiff's website.

(v) Defendant 1 was interviewed by NDTV during his employment with Plaintiff 1. The interview carried a clear caption, indicating that Defendant 1 was an employee of the Plaintiff 1. Defendant 1 proceeded, after the cessation of his relationship with Plaintiff 1, to upload the very same video clip on the website of Defendant 2, deleting the caption which indicated the relationship between Defendant 1 and Plaintiff 1. This, again, was misrepresenting in nature.



(v) The acronym “DFI”, employed by Defendants 1 and 2 infringed the plaintiffs’ registered “DHI” trademarks, as they were deceptively similar, both in appearance as well as phonetically. Mr. Sai Deepak has drawn my attention to an order passed by a coordinate bench of this Court in *Lt. Overseas N. America Inc. v. K.R.B.L. Ltd*¹, which enjoined use of the impugned trademark in that case, as a trademark, but permitted it to be used in a descriptive sense. As such, submits Mr. Sai Deepak, Defendants 1 and 2 may continue to use “DFI” in a descriptive sense, as for example in the course of a sentence while explaining the procedure that they follow, but not as a trademark, prominently on their website or otherwise, promoting their technique.

14. Based on these submissions, Mr. Sai Deepak prays for issuance of summons in the suit and grant the interim reliefs sought in IA 15595/2023, the prayer clause in which reads as under:

“ a) grant an ex-parte ad-interim injunction directing the Defendants, their management, members, affiliates servants, officers, employees, representatives, agents and all other persons claiming through or under them or acting in concert with them or on their behalf or acting on their instructions to forthwith remove the words “DFI” or “DHI” or any other deceptively similar word to “DHI” from their website ‘www.evolvedhairindia.com’ and any platform whether in print or digital form disseminated through any mode/medium, in relation to any clinics/businesses operated by them or their management, members, affiliates, servants, officers, employees, representatives, agents and all other persons claiming through or under them or acting in concert with them or on their behalf or acting on their instructions;

¹ MANU/DE/1103/2023



b) grant an ex-parte ad- interim injunction restraining the Defendants, their management, members, affiliates, servants, officers, employees, representatives, agents and all other persons claiming through or under them or acting in concert with them or on their behalf or acting on their instructions from in any manner using the words “DFI” or “DHI” or any other deceptively similar word to “DHI” through any platform whether in print or digital form disseminated through any mode/medium, in relation to any clinics/businesses operated by them or their management, members, affiliates, servants, officers, employees, representatives, agents and all other persons claiming through or under them or acting in concert with them or on their behalf or acting on their instructions.

c) grant an ex-parte ad-interim injunction directing the Defendants, their management, members, affiliates, servants, officers, employees, representatives, agents and all other persons claiming through or under them or acting in concert with them or on their behalf or acting on their instructions to forthwith remove the photographs of the clients of the Plaintiffs as well as the video interview of Defendant No. 1 and the photograph of Defendant No. 1 at the AWMC conference from their website ‘www.evolvedhairindia.com’ and any platform whether in print or digital form disseminated through any mode/medium ;

d) grant an ex-parte ad-interim injunction directing the Defendants, their management, members, affiliates, servants, officers, employees, representatives, agents and all other persons claiming through or under them or acting in concert with them or on their behalf or acting on their instructions to forthwith return the entire confidential data of the Plaintiffs as defined under the Confidentiality Agreement dated 19.09.2011 read with the Severance Agreement dated 08.10.2022;

e) grant an ex-parte ad-interim injunction restraining the Defendants, their management, members, affiliates, servants, officers, employees, representatives, agents and all other persons claiming through or under them or acting in concert with them or on their behalf or acting on their instructions from disclosing or utilizing or misusing any confidential information belonging to the Plaintiffs (defined in the foregoing paras) including but not limited to the client database;

f) grant an ex-parte ad-interim injunction directing the Defendants, their management, members, affiliates, servants, officers, employees, representatives, agents and all other persons



claiming through or under them or acting in concert with them or on their behalf or acting on their instructions from in any manner individually or through any third party, soliciting, diverting or appropriating or attempting such acts with clients or patrons and employees of the Plaintiffs or any of its affiliates in relation to any clinics/businesses operated by them or their management, members, affiliates, servants, officers, employees, representatives, agents and all other persons claiming through or under them or acting in concert with them or on their behalf or acting on their instructions;

g) grant an ex-parte ad-interim injunction granted restraining the Defendant No. 1 from directly or indirectly, individually or in partnership or otherwise engage in any business of hair restoration across India for a period of 1 year from the date of his resignation and thereafter in Delhi NCR for a further period of 4 years;

h) grant an ex-parte ad-interim injunction restraining the Defendants their assigns, representatives, agents and all other persons claiming through or under him or acting in concert with him or on his behalf or acting on his instructions from in any manner whatsoever from defaming, disparaging or denigrating or depicting in bad light the Plaintiffs' brand, employees, company, clinic, services and products under the DHI brand name and marks through any medium whether print or digital disseminated through any form ;

i) grant an ex-parte ad-interim injunction maybe granted restraining the Defendant No. 1 from communicating with and/or getting in contact with, in any manner whatsoever, any of the current employees and/or official representatives of the Plaintiff No. 1 with regard to and in connection with any content that may amount to defamation of DHI and/or Plaintiffs and /or its employees;

j) grant an ex-parte ad-interim injunction granted directing the Defendant No. 1 to take down all the Instagram and all social media posts made by him either on social media or google review or any internet platform disparaging the mark of the Plaintiff or defaming and denigrating the brand of the Plaintiffs;

k) pass any other order(s) which the Hon'ble Court thinks fit and proper in the circumstances of the case.”

15. Responding to Mr. Sai Deepak's submissions, Mr. Akshay



Makhija, learned Senior Counsel appearing for the defendants, frankly acknowledges, at the outset, that his client had, in fact, posted certain messages, on his Instagram web page and other virtual sites, which criticised the plaintiffs. He submits that these messages were posted as a knee-jerk reaction to the plaintiffs having, consequent to the defendants leaving the employment of the Plaintiff 1, sought to question, through various posts on the plaintiffs' social media pages and otherwise the mental faculties of Defendant 1 apart from other baseless allegations. Mr. Makhija submits that Defendant 1 has removed all such posts and messages and that, at present, there is nothing, on any of the websites controlled by Defendant 1, which could be said to denigrate or disparage the plaintiffs in any manner.

16. Insofar as the allegation of trademark infringement is concerned, Mr. Makhija submits that the trademark of Defendants 1 and 2 is not "DFI", but "Evolved Hair India Ltd". DFI, he submits, is merely an acronym representing the technique used by Defendant 1 and 2, being "Direct Follicle Insertion". As such, he submits that Defendants 1 and 2 are using "DFI" only as a descriptor, and not as a trademark. Nonetheless, he submits that his client would forthwith remove, from all its social media webpages and other sites, the photographs which earlier figured on the plaintiff's website and are alleged to have been morphed by his client.

17. Mr. Makhija denies the allegation of Defendant 1 having solicited any of the plaintiffs' employees or clients. He submits that the plaintiffs' erstwhile clients, who may be now visiting his clinic, do



so because of their commitment to Defendant 1 and faith in him. Similarly, he submits that there is nothing to indicate that his client had caused or otherwise persuaded the plaintiffs' employees to leave their service and join his client. He emphatically denies the allegation that the defendants had ever contacted any of the plaintiffs' employees.

18. Mr. Makhija further submits that the clauses of the NCCA, and the Severance Agreement, that Mr. Sai Deepak seeks to enforce, cannot be enforced, in view of Section 14 of the Specific Relief Act, 1947; nor can any injunction be granted on the basis thereof, in view of Section 41 of the said Act. He presses into service, in this context, the judgment of the Supreme Court in *Percept D' Mark (India) (P) Ltd. v. Zaheer Khan*² and of this Court in *Arvinder Singh v. Lal Pathlabs Pvt. Ltd.*³ and *A.B.P. Networks Pvt. Ltd. v. Malika Malhotra*⁴, the latter having been rendered by this Bench.

19. In the circumstances, submits Mr. Makhija, no case for grant of interlocutory relief to the plaintiffs, at this stage, can be said to have been made out.

Analysis

20. I may straightaway observe, at the very outset, that, in view of the principle enunciated in a recent order, passed by the Division

² (2006) 4 SCC 227

³ (2015) 149 DRJ 88 (DB)

⁴ 283 (2021) DLT 329



Bench of this Court on 21 August 2023, the prayer for interim injunction, restraining the defendants from using “DFI” as a trademark cannot be granted without allowing the defendant an opportunity to file a reply to the present application. In *Wander Ltd v. Antox (India) Pvt Ltd*⁵, the Supreme Court clearly advocated adoption of a different approach, by Courts seized with applications for grant of interlocutory injunctive relief in intellectual property matters, when dealing with defendants who had been in the market for some time, *vis-à-vis* those who were yet to enter the market, thus:

“9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated

“...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the ‘balance of convenience’ lies.”

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. *The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations*

⁵ 1990 Supp SCC 727



somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.”

(Emphasis supplied)

Though without referring to this decision, the Division Bench of this Court has, in its order dated 21 August 2023 in FAO (OS) (COMM) 171/2023⁶, held as under:

“Having conferred our thoughtful consideration on the rival submissions noticed above, we find that, undisputedly, the suit upon being presented on or about 02 August 2023 came up for consideration for the first time on 07 August 2023. The ad interim injunction came to be granted merely two days thereafter on 09 August 2023. Admittedly, and as per the plaintiffs/respondents own case, the product of the appellant/defendant had been introduced somewhere around May 2023. *In our considered opinion, this fact alone warranted the appellants/defendants being accorded at least a rudimentary opportunity to oppose the application which sought grant of ad interim injunction.”*

FAO (OS) (COMM) 171/2023, I may note, arose from an order passed by me, granting ad interim relief after hearing both sides at length. Nonetheless, in the opinion of the Division Bench – which, I may respectfully observe, is in line with the enunciation of law in *Wander*⁵ and represents, therefore, the correct legal position – where the impugned mark has been used by the defendant for any length of time, that sole factor would entitle the defendant to an opportunity to respond, inviting, to the prayer for interlocutory injunctive relief, before orders are passed by the Court thereon.

21. Though it is true that various Single Benches of this Court – including myself – have, in the past, been granting ad interim injunctive reliefs, often *ex parte* and on the very first date of hearing,

⁶ **Dabur India Ltd v. Emami Ltd**



even where the defendant has been using the impugned mark, or where the longevity of user, by the defendant, of the impugned mark, is unknown, that position cannot, in my considered opinion, continue, in view of the afore extracted enunciation of the legal position by the Division Bench in *Dabur*⁶. If the defendant has been using the impugned mark, before the plaintiff instituted the suit, then, in all but, possibly, the most exceptional cases, the decision in *Dabur*⁶ would obligate the Court to extend, to the defendant, an opportunity to submit a written response to the prayer for interlocutory relief, before proceeding to pass orders thereon. As to whether there may be any exceptional case in which this procedure is not required to be followed, is a matter on which, for the present, I do not venture to express any definitive opinion. Suffice it to state, however, that the present is not one such case.

22. Inasmuch as Defendants 1 and 2 had been using the impugned “DFI” mark for some time, following para 8 of the order in *Dabur*⁶, the defendants would be entitled to file a response, to the prayer for injunction against use of the “DFI” mark, before any orders are passed on the said prayer.

23. Insofar as the other grievances of the plaintiffs are concerned, most of them stand, for the present, redressed. Mr. Makhija has, on instructions, stated that all the posts, on the defendants’ social media pages and elsewhere, with which the plaintiffs have expressed grievance, have been taken down. He has further submitted that the morphed “before” and “after” images of the photographs which



originally appeared on the plaintiffs' website, have also been removed. He undertakes, on behalf of his client, that no such messages, which criticise, disparage or denigrate the plaintiffs, or the DHI technique adopted by the plaintiffs, shall be posted or uploaded by his client on any Internet website. The defendants shall remain bound by the said undertaking, till the next date of hearing.

24. Apropos the declaration contained on the website of Defendant 2 and reproduced in para 12(iii)(c) *supra*, is concerned, I am *prima facie* in agreement with Mr. Makhija that it cannot be regarded as denigrating or disparaging the plaintiffs in any manner. All it says is that the defendants are adept at, *inter alia*, repair and density corrections for, among others, previous DHI surgeries. That cannot be regarded as, in any manner, suggesting that DHI surgeries are not advisable or that, inevitably, in every case, density corrections have to be undertaken. Even if, for that matter, it were to be so interpreted, that cannot amount to "disparagement" of the plaintiffs, as known to law.

25. Similarly, the use, by Defendant 1, of his interview by NDTV, during the time he was in employment with Plaintiff 1, does not, *prima facie*, constitute any actionable wrong. The deletion, from the said video, of the blurb/caption identifying Defendant 1 is working with Plaintiff 1 could obviously not be retained, after he had ceased to be in the plaintiffs' service. In fact, had he retained the said caption, the plaintiffs may have had justifiable cause for complaint, on the ground that he was misrepresenting himself as continuing to be



associated with the plaintiffs, which may also have tantamount to, in a sense, passing off.

26. Insofar as the allegation of violation of the NCCA and the Severance Agreement is concerned, Mr. Sai Deepak predicates the charge on the facts; firstly, that certain former employees of Plaintiff 1 and 2 had defected to Defendants 1 and 2; secondly, that Defendant 1 was entering into communications with former clients of the plaintiffs, to undergo further treatment with the defendant personally at his clinic and, thirdly, that Defendant 1 had set up a competing business, within the prohibited period of one year, in the Delhi NCR region. While denying the allegations on facts, Mr. Makhija has further sought to contend that the NCCA and Severance Agreement, to the extent the plaintiffs seek to enforce their covenants and seeks an injunction on the basis thereof, can neither be enforced nor be made the basis of an injunction, in view of Sections 41 and 14 of the Specific Relief Act, read with Section 27 of the Contract Act. That, in my view, is an aspect which would require arguments and consideration, and cannot be the basis of an *ad interim* order, even before the reply is filed in the present application.

27. Insofar as the allegation, of Mr. Sai Deepak, of breach, by Defendant 1, of the covenants of the NCCA and Severance Agreement, are concerned, however it may not be possible to return the *prima facie* finding, at this stage, positively in that regard. The proscription against setting up a competing business relates only to Delhi, and not to the Delhi NCR region. Gurgaon is not in Delhi. It



cannot, therefore, be stated, *prima facie*, that, in setting up a competing business in Gurgaon, Defendant 1 breached the NCCA or the Severance Agreement.

28. Apropos the defection of certain employees from the services of the plaintiffs to those of Defendant 1, there is no document, on record, which would go to show, even *prima facie*, that the defection took place owing to soliciting of the services by Defendant 1. The mere fact that false pretexts were cited by the concerned employee for leaving the services of Plaintiff 2 and that, she, or he, was found working with Defendant 1 cannot justify a *prima facie* finding that Defendant 1 had persuaded the concerned employee to leave the Plaintiff 2 and join him. At the very least, before returning such a finding, Defendant 1 has to be granted an opportunity to explain the allegation.

29. Equally true would this be, with respect to the allegation of Defendant 1 having solicited former clients of Plaintiff 2 to continue the treatment with Defendant 1. The communication with Mr. Abhishek Jain, on which Mr. Sai Deepak places reliance, does not *prima facie* amount to soliciting of Mr. Jain. It merely informs Mr. Jain of the fact that Defendant 1 has now broken off from Plaintiff 1 and started his independent enterprise.

30. More than that, at this ad interim stage, I am afraid the plaintiffs cannot seek.



31. As such, let notice issue on the present application, returnable before the Court on 3 October 2023. Notice is accepted, on behalf of the defendants, by Mr. Harkirat Singh. Reply, if any, be filed within two weeks with an advance copy to learned counsel for the plaintiffs who may file a rejoinder thereto if any at least 48 hours before the next date of hearing. No extension of time for filing reply or rejoinder would be granted and no adjournment would be granted on the next date of hearing, either.

32. Till the next date of hearing, the following directions are issued:

(i) The defendants may continue running their establishments in Gurgaon. However, Defendant 1 shall strictly abide by his obligations under the NCCA and the Severance Agreement.

(ii) The defendants shall stand restrained from making any comment on any physical or virtual site or uploading any material, referring to or dealing with the plaintiffs or the DHI technique which the plaintiffs, through its predecessor in interest, claims to have pioneered.

(iii) There shall be no absolute embargo on the defendants professionally dealing with clients who may earlier have been with the plaintiffs. However, communications with the defendants and any such clients would make no reference to the



plaintiffs whatsoever. The communications would also desist from making any comment on the DHI technique, or on any restorative measures that the defendants claim to be undertaking, consequent on the DHI technique having been applied to such clients.

(iv) No photographs or other material which was, or is, on the plaintiffs' website, shall be replicated or used by the defendants without the plaintiffs' permission, either as it is or in any altered or morphed fashion.

(v) These directions shall not restrain the defendants from extending, to clients or customers, hair transplant services using the DFI technique, in consonance with the above directions.

(vi) Keeping in view the nature of the allegations involved in the present case, and the fact that several ex-employees of Plaintiff 1 and 2, who were privy to the confidential data of the plaintiffs, are now working with Defendant 1, some interim protective directions are required to be passed. Accordingly, Defendant 1 is directed to place on record, by way of affidavit within three days, details of the data or material, obtained by Defendant 1 during the course of his employment with the Plaintiff 1, which conforms to the definition of "confidential information" as contained in the NCCA dated 19 September 2011. Defendant 1 is also directed to submit to the Registry of this Court, within ten days, electronic copies of all such data, in



a sealed cover. Defendant 1 may, if he so chooses, provide the data in encrypted format. The Registry shall ensure that the data is kept in a sealed cover, unopened, and subject to further orders to be passed by this Court.

33. Mr. Sai Deepak prays for appointment of a local commissioner, to ensure that the defendants do not alter, or efface the data on their systems, pertaining to Plaintiff 1 or obtained by Defendant 1 by reason of his employment with the Plaintiff 1. Though it is not a statutory imperative, nonetheless, in the facts of the present case, I do not deem it appropriate to consider the request, in the absence of a specific application, setting out exactly the nature of the commission of which the plaintiffs desire execution. Liberty is, however, reserved with the plaintiffs to move such an application which, if and when moved, would be examined on its own merits. The Court would examine whether, despite the directions already given hereinabove, any further justification exists for appointment of a learned Local Commissioner.

34. The prayer for *ad interim* relief stands disposed of accordingly.

35. It is made clear that the observations contained in this order are merely intended to examine whether any prayer for grant of ad interim relief, even before the defendants are allowed to respond to the present application, exists. They are not intended to represent any expression of opinion beyond what is necessary for the said purpose. They shall not, therefore, influence the Court in any manner, either



while considering the present application on the next date of hearing or while examining the merits of the suit.

I.A 15596/2023 [seeking exemption in filing original and certified documents]

36. Subject to the plaintiffs filing original and legible copies of any dim or illegible documents within 30 days, exemption is granted for the present.

37. The application is disposed of.

C.HARI SHANKAR, J

AUGUST 24, 2023
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