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The **Bombay High Court** in the case of **Elder Prroject Limited vs Elder Neutraceuticals Private Limited [Interim Application (L) No. 35091 of 2025]** dated **March 09, 2026**, has held that a party who is itself an infringer of a third party's registered trademark cannot maintain a suit for infringement or passing off against another party. Referring to the decision of *Capital Plastic Industries vs. Kappo Plastic Industries [1998 (8) PTC 182 (Del)]*, the Court reiterated that a pirate cannot sue another pirate for infringement.

The Court noted that the Plaintiff's act of applying for and securing ex-parte ad-interim injunction by deliberately withholding the relevant material from Court has undoubtedly led to immense inconvenience and losses for the Defendant. Since 'ELDER' is the proprietary mark of Elder Pharmaceutical Ltd. (EPL), and the siblings have adopted different versions thereof, the High Court awarded a moderate amount of Rs. 1 Lakh to the Defendant, more towards token costs, for Plaintiff's misuse of Court's exceptional power of grant of ex-parte injunction by indulging in acts of deliberate nondisclosure.

The High Court clarified that a party seeking an equitable relief like an injunction, especially an ex-parte one, must approach the court with clean hands and is under a high duty to make a full, fair, and accurate disclosure of all material facts. A fact is material if it has the potential to significantly influence the court's decision-making process. Thus, where an ex-parte injunction is obtained by deliberately suppressing material facts, the court is empowered under Order 39 Rule 4 of the CPC to vacate the injunction on the ground of suppression alone, as a penalty and to deter such abuse of the court process, without delving into the merits of the case.

The Court identified four major areas of suppression by the Plaintiff, i.e., (i) the prior registration and use of the 'ELDER' mark by EPL since 1983; (ii) the familial relationship between the directors of the Plaintiff and Defendant and their past association with EPL; (iii) four adverse orders from the Delhi High Court where the Plaintiff's claims over the 'ELDER' mark were repeatedly rejected; and (iv) proceedings initiated by the Official Liquidator of EPL against the Plaintiff for unauthorized use of the mark.

The Court observed that the Plaintiff approached the court with a plain story of being the originator of the mark since 1992, completely concealing that EPL was the originator and registered owner of the 'ELDER' mark and that the Plaintiff was merely a contract manufacturer for EPL.

The Court also found the suppression of the Delhi High Court orders to be 'more disturbing', as in those proceedings, the Plaintiff's director had admitted on oath that the Plaintiff claimed no right in the trademark 'ELDER' and was only a job worker for EPL. In its previous order,

the Delhi High Court had also held that the Plaintiff was an infringer of EPL's mark and could not claim any shared or independent reputation.

Further, the Court observed that the Plaintiff itself appears to be an infringer of EPL's trademark, having taken advantage of EPL's liquidation to secure a registration for a similar mark. The Bench held that it can go behind a trademark registration at the interim stage if there are doubts about its validity, and in this case, there was substantial material creating such doubts.

Since the Plaintiff's claim of prior use since 1992-93 was found to be prima facie fallacious in light of its own admissions that it was a contract manufacturer for EPL until March 2016, and in contrast, the Defendant had established prima facie use of its mark since 2015, the Court concluded that the Plaintiff failed to satisfy the classic trinity test for passing off, and that the balance of convenience was tilted in favour of the Defendant.