Trade Marks Act, 1999, Sections 9, 30 and 35 – In our view, at this juncture i.e. at the interim stage, even assuming distinctiveness claimed by the appellant in its favor qua its artificial sweetener, the appellant has rightly been declined an injunction by the learned Single Judge since it is evident and has indeed been found by the learned Single Judge that the use of the term 'Sugar Free' by the respondent is not in the trademark sense but as a common descriptive adjective – Therefore, the plaintiff would not be entitled, prima facie, to appropriate the expression "Sugar Free" in respect of any field of activity beyond its range of artificial sweeteners / sugar substitutes. This is de hors the question as to whether the plaintiff can at all claim "Sugar Free" as a trademark, which question would have to be conclusively determined in the suit.‖ The learned Single Judge in the above quoted decision of Shree Baidyanath Ayurved Bhawan Pvt. Ltd, noticed that while a considerable degree of distinctiveness in relation to the appellant's artificial sweetener was prima facie recognized by the learned Single Judge in the case of Sugar Free-I, nevertheless, the distinctiveness acquired qua the artificial sweetener by the appellant is, in our view, not sufficient enough to deny the respondent the descriptive uses of the phrase 'Sugar Free', particularly, when the respondent's product is frozen desserts, a market segment in which the appellant is totally absent. In our view, even the entry of the appellant into the beverage market 'Sugar Free D'lite' has not been shown to acquire such distinctiveness so as to bar all food products of the other competitors from using the phrase 'Sugar Free' in a purely descriptive sense.

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