

F. Hoffmann-La Roche Ag & Anr vs Natco Pharma Limited on 12 July, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 567/2024 & I.A. Nos. 33088/2024, 33089/2024, 33090/2024, 33091/2024, 33092/2024 & 33093/2024

F. HOFFMANN-LA ROCHE AG & ANR.

Through: Mr. Pravin Anand with Mr. Chopra, Ms. Prachi Agarwal, Ms. Sanya Singh and Mr. [Redacted] Advocates.

versus

NATCO PHARMA LIMITED

.....Defendant

Through: Mr. C.S. Vaidyanathan, Senior Advocate with Mr. J. Sai Deepak, Ms. S. Majumdar, Mr. Afzal B. Khan, Mr. Dominic Alvares and Mr. Samik Mukherjee, Advocates.
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CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA
ORDER

% 12.07.2024 I.A. No. 33091/2024 (Exemption from filing clear/certified copies of documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), seeking an exemption from filing clearer copies, certified copies and/or documents with exact margins and/or appropriate translations or typed version of handwritten documents and also seeking exemption from filing English language translations or originals or other relevant documents, at this stage.

2. Exemption is granted, subject to all just exceptions.

3. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance within four weeks from today or before the next date of hearing, whichever is earlier.

4. Accordingly, the present application is disposed of. I.A. No. 33089/2024 (Application to file additional documents)

5. The present application has been filed on behalf of the plaintiff under Order XI Rule 1(4) of the CPC as amended by the Commercial Courts Act, 2015, Commercial Division and Commercial

Appellate Division, read with Section 151 CPC, seeking liberty to file additional documents at the appropriate stage.

6. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

7. Accordingly, the present application is disposed of. I.A. No. 33090/2024 (Application for exemption from Pre-institution Mediation)

8. The present is an application under Section 12A of the Commercial Courts Act, 2015 read with Section 151 of the CPC for exemption from instituting Pre-institution Mediation.

9. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of Yamini Manohar Versus T.K.D. Keerthi, 2023 SCC OnLine SC 1382, and Division Bench of this Court in Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd., 2022 SCC OnLine Del 3529, exemption from attempting Pre-institution Mediation, is granted.

10. Accordingly, the application stands disposed of. I.A. No. 33092/2024 (Application seeking extension of time to file Court Fees)

11. The present is an application under Section 149 read with Section 151 of the CPC, seeking extension of time to file Court Fees.

12. Learned counsel appearing for the plaintiff submits that Court fees, has already been deposited.

13. Recording the same, the present application is disposed of. I.A. No. 33093/2024 (Application seeking time to file the required application under Section 63(4)(C) of the Bharatiya Sakshya Adhiniyam)

14. The present application has been filed under Section 151 CPC on behalf of the plaintiffs seeking time for filing the required application under Section 63(4)(C) of the Bharatiya Sakshya Adhiniyam, 2023 ("BSA").

15. Learned counsel appearing for the plaintiff submits that the required application in terms of Section 63(4)(C) of the BSA, shall be filed within a period of five days.

16. Let the needful be done, accordingly.

17. With the aforesaid directions, the application is disposed of. CS(COMM) 567/2024

18. Let the plaint be registered as suit.

19. Issue summons to the defendant.

20. Summon are accepted by learned counsel appearing for the defendant.

21. Let written statement be filed by the defendant within thirty days from today. Along with the written statement, the defendant shall also file affidavit of admission/denial of the plaintiff's documents, without which, the written statement shall not be taken on record.

22. Liberty is given to the plaintiff to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiff, an affidavit of admission/denial of documents of the defendant, be filed by the plaintiff, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought and given within the timelines.

23. List before the Joint Registrar (Judicial) for marking of exhibits on 29th July, 2024.

24. List before the Court on 21st August, 2024. I.A. No. 33088/2024 (Application on behalf of the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 CPC seeking interim injunction)

25. The plaintiffs have filed the present suit for permanent injunction restraining infringement of Indian Patent No. IN 334397 titled "COMPOUNDS FOR TREATING SPINAL MUSCULAR ATROPHY", along with rendition of accounts/damages, delivery up etc., against the defendant.

26. Mr. Anand, learned counsel appearing for the plaintiffs submits that that the suit patent IN 397 is registered in the name of plaintiff no. 1 and plaintiff no. 2, and is currently valid and subsisting.

27. It is submitted that the suit patent has a term of 20 years from May 11, 2015, which expires on May 11, 2035. It is further submitted that being the rightful owner of the patent suit, by virtue of Section 48 of the Patents Act, 1970, the plaintiffs have the exclusive right to prevent third parties from the act of making, using, offering for sale, selling, exporting or importing into India, products that fall within the scope of the claims of the suit patent up to May 11, 2035.

28. Learned counsel appearing for the plaintiffs submits that their investigation has revealed that defendant has filed a patent application on 26th September, 2022 under application no. 202241055182. The application has been published recently, as on 29th March, 2024. It is submitted that in view of the admissions made by the defendant in its patent application, it is evident that the defendant was aware of plaintiff no. 1's rights in the suit patent.

29. Issue notice.

30. Notice is accepted by learned counsel appearing for the defendant.

31. Learned Senior Counsel appearing for the defendant submits, on instructions, that the defendant intends to launch the product in October, 2024.

32. The statement is taken on record.

33. Let reply be filed within a period of two weeks. Rejoinder thereto, if any, be filed within a period of two weeks, thereafter.

34. List on 21st August, 2024.

MINI PUSHKARNA, J JULY 12, 2024/c