

Bristol-Myers Squibb Holdings Ireland ... vs Zee Laboratories Limited & Ors on 8 November, 2021

Author: Jayant Nath

Bench: Jayant Nath

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 550/2021

BRISTOL-MYERS SQUIBB HOLDINGS IRELAND UNLIMITED
COMPANY & ORS. Plaintiffs
Through Mr.Pravin Anand, Ms.Prachi
Aggarwal, Ms. Ridhi Bajaj and Ms.Richa
Bhargava, Advs.
versus
ZEE LABORATORIES LIMITED & ORS. Defendant
Through Mr.Siddharth Bambha and Mr.Chirag
Ahluwalia, Advs.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH
ORDER

% 08.11.2021 IA.Nos. 14225, 14227, 14228/2021 Applications are allowed, subject to just exceptions.
IA. 14226/2021 In view of the averments made in the present application, the same is allowed.

The plaintiffs are exempted from pre-litigation mediation. CS(COMM) 550/2021 Let the plaint be registered as a suit.

Issue summons.

Learned counsel for defendants No.1, 2 and 3 accepts notice. List on 17.12.2021.

1. This is an application under Order 39 Rules 1 and 2 CPC seeking the following reliefs:

"a. An order of ad interim injunction restraining the Defendants, their directors, employees, officers, servants, agents, associate and group companies and all others acting for and on their behalf from using, making, selling, distributing, advertising (including on the Defendant No. 2's website and on third party e-commerce website, www.indiamart.com), exporting, importing and offering for sale, or in any other manner, directly or indirectly, dealing in any product (in any form), including but not limited to the brand names 'Apixaz' and 'Apiquis' or any other brand name, that infringes the subject matter of Indian Patent Nos. 247381 and permanently delist and

remove all advertisements/links relating to the infringing generic products 'Apixaz' and 'Apiquis' from any website, including but not limited to Defendant No. 2's website <https://zeelabpharmacy.com> and on third party website www.indiamart.com, that infringes the subject matter of Indian Patent Nos. 247381;

b. An order directing the Defendants to recall the products from the market, remove any references to generic Apixaban product, including under the brand names 'Apixaz' and 'Apiquis' covered and/or claimed under the subject matter of Indian Patent No. 247381 including removal from their website(s) and write to any third party website(s) wherein the said drug is being advertised under the name of the Defendants.

c. An order directing the Defendants to state and disclose on affidavit all generic Apixaban product(s), including under the brand names 'Apixaz' and 'Apiquis' infringing the suit patent including the quantity manufactured; quantity supplied; batch details; details of the units where the said products were and/or are being manufactured; details of the retailers, wholesalers, distributors, stockists, hospitals, dispensaries to which the said products have been supplied, or any other details as this Hon'ble Court may deem fit to direct, from the date of the institution of the present suit;

d. An order directing the Defendants to state the exact sales figures of the generic Apixaban product, including under the brand names 'Apixaz' and 'Apiquis' and file the same before this Hon'ble Court;

e. An order directing the Defendants to file a statement of accounts and assets on affidavit within a period of two weeks from service of notice of the present application, and restraining the Defendants from disposing of or dealing with their assets in a manner which may adversely affect the Plaintiffs' ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the Plaintiffs;"

2. Learned counsel for the plaintiff had drawn my attention to an earlier order passed by this court in CS(COMM) 302/2021 being BRISTOLMYERS SQUIBB IRELAND UNLIMITED COMPANY & ORS. vs. MICRO LABS LIMITED wherein after hearing arguments of the parties on 16.08.2021 this court passed the following order:-

"xxx

35. Having noted the observations of the Division Bench, in my opinion, for purpose of passing of an interim order, the facts and the circumstances of each case would be different. There would not be complete parity in the facts that were subject matter of the order of the Division Bench in AstraZeneca AB &Anr. v. Intas Pharmaceuticals Ltd.,(supra) or in the earlier orders of the Coordinate Bench in AstraZeneca AB &Anr.

v. P.Kumar&Anr., (supra) or in EISAI Co. Ltd. &Anr. v. Satish Reddy &Anr., (supra). In any case, as noted above, appeals against the interim orders of the Predecessor Bench are pending before the Division Bench and are coming up for hearing on 31.08.2021. The pleas which are raised by the defendant have to be considered either at the time of arguments before the Division Bench or at the time of disposal of the interim injunction applications that are pending adjudication now before this court. It would be improper for this court to ignore the aforesaid injunctions orders passed by the Predecessor Bench for the stated infringement of the same patent filed by the same plaintiffs.

36. Accordingly, an ex-parte ad- interim injunction is passed restraining the defendant, its directors, employees, officers, servants, agents, stockists, wholesalers etc. from using, making, selling, distributing, advertising, marketing, exporting, offering for sale in any generic Apixaban product under any brand name, including but not limited to 'APIVAS', which infringes the suit Patent IN 247381. The defendant will also recall the impugned generic products which infringe the suit patent from its distributors, wholesalers etc."

3. Accordingly, an ad interim injunction is passed in favour of the plaintiff and against the Defendants, their directors, employees, officers, servants, agents, associate and group companies and all others acting for and on their behalf from using, making, selling, distributing, advertising (including on the Defendant No. 2's website and on third party e-commerce website, www.indiamart.com), exporting, importing and offering for sale, or in any other manner, directly or indirectly, dealing in any product (in any form), including but not limited to the brand names 'Apixaz' and 'Apiquis' or any other brand name, that infringes the subject matter of Indian Patent Nos. 247381 and permanently delist and remove all advertisements/links relating to the infringing generic products 'Apixaz' and 'Apiquis' from any website, including but not limited to Defendant No. 2's website <https://zeelabpharmacy.com> and on third party website www.indiamart.com, that infringes the subject matter of Indian Patent Nos. 247381.

4. Issue notice. Learned counsel for defendants No.1, 2 and 3 accepts notice.

5. List on 17.12.2021.

JAYANT NATH, J NOVEMBER 8, 2021 rb/dr.