

Novartis Ag & Anr vs Msn Laboratories Private Limited on 11 May, 2022

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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Signing Date:13.05.2022
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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 307/2022
NOVARTIS AG & ANR. Plaintiffs
Through: Mr. Hemant Singh, Ms. Mamta Rani
Jha, Mr. Saif Rahman Ansari & Mr.
Siddhant Sharma, Advocates.
versus
MSN LABORATORIES PRIVATE LIMITED Defendant
Through: Ms. Rajeshwari H., Mr. Deepanshu
Nagar, Advocates.
Mr. Harish V. Shankar, CGSC.
CORAM:
JUSTICE PRATHIBA M. SINGH
ORDER

% 11.05.2022

1. This hearing has been done through hybrid mode. I.A. 7327/2022 (u/O XI Rule 1(4) CPC)

2. This is an application seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter, 'Commercial Courts Act'). 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.

3. I.A.7327/2022 is disposed of.

I.A. 7328/2022 (exemption from pre-institution mediation and settlement)

4. This is an application seeking exemption from instituting pre- litigation mediation. In view of the orders passed in CS (COMM) 132/2022 titled Upgrad Education v. Intellipaate Software, exemption is granted.

5. I.A. 7328/2022 is allowed and disposed of.

CS(COMM) 307/2022

6. Let the plaint be registered as a suit.

7. Issue summons to the Defendant through all modes upon filing of Process Fee.

8. Ms. Rajeshwari accepts summons on behalf of the Defendant. The summons to the Defendant shall indicate that a written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

9. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement(s). Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, 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 any documents, the same shall be sought and given within the timelines.

10. List before the Joint Registrar for marking of exhibits on 28th July, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

11. List before Court on 20th May, 2022.

I.As. 7325/2022 (for stay), I.A. 7326/2022 (u/O XXVI Rule 9 CPC)

12. This is a suit for permanent injunction restraining infringement of Indian Patent No. 283133, damages, rendition of accounts, delivery up etc. The details of the said patent are as under:

Patent No.	:	283133
Title	:	PYRROLOPYRIMIDINE

		COMPOUNDS AND THEIR USES
Date of filing	:	24th May, 2007
Date of Expiry	:	24th May, 2027

13. The cause of action in the present suit is based on an Office Memorandum dated 06th April, 2022 issued by the Department of Pharmaceuticals, Ministry of Chemicals & Fertilizers wherein the authorities appear to have commenced a process of aggregation of details of local manufacturers in India possessing capabilities to manufacture the pharmaceutical preparation, namely, 'RIBOCICLIB'. As per the said Office Memorandum, Defendant's name has been included in the list for the procurement of 'RIBOCICLIB TAB/CAP, RIBOCICLIB 200 mg (BRAND:

KRYXANA)'.

14. The Submission of Mr. Hemant Singh, Id. Counsel for the Plaintiffs is that the fact that the Defendant has expressed interest to the government as having capability to manufacture the product which is the subject matter of a patent granted in favour of the Plaintiff would show that there is an imminent threat of violation of rights of the Plaintiff in the said patent.

15. He further submits that a representation was made by Plaintiffs to the Government on which the Plaintiffs expects that a decision may be taken shortly.

16. Issue notice. Ms. Rajeshwari, Id. counsel, accepts notice on behalf of the Defendant. She submits that the procurement by the Government would be exempted under Section 47 of the Patents Act, 1970 (hereinafter "Act") as section 48 is subject to Section 47 of the Act. It is her submission that the said provision would apply both to the Government or anyone who makes it for and on behalf of the Government. She further submits that the Defendant has a manufacturing license for 'RIBOCICLIB' but she prays for further time to seek instruction as to the nature and the date of the license.

17. Mr. Singh, Id. Counsel on the other hand contends that this can at best be procurement under Section 100 of the Act in which case, a specific procedure would have to be followed for the purpose of manufacturing or procuring a patented product. Such a procurement by the Government would also be subject to judicial review of the High Court.

18. On a query from the Court, Id. Counsel for the Plaintiff submits that the products of the Plaintiff which are commercially sold in India are imported in sufficient quantities for the purposes of catering to the needs of patients in India. He also submits that sufficient quantity of this product has also been supplied to the Government for the purpose of treatment of the respective medical condition.

19. Considering the nature of the matter and the fact that the entire basis of the suit is the Public Notice/Office Memorandum issued by the Department of Pharmaceuticals, Ministry of Chemical and Fertilizers, it is deemed appropriate to issue notice to the said Department so as to ascertain the need and purpose behind the issuance of the said Public Notice/Office Memorandum and also the provision which has been invoked by the Government for such procurement. Accordingly, Secretary, Department of Pharmaceuticals, Ministry of Chemical and Fertilizers is impleaded as Defendant No.2 in the present matter. Mr. Harish V. Shankar, Id. CGSC who is present in Court, accepts notice on behalf of the Department. He submits that he needs some time to seek instructions in the matter to make submissions.

20. Let Defendant No.1 file on record the copy of any manufacturing license which it may have in respect of the patent in question in the present suit.

21. Let the amended memo of parties be filed within three days.

22. If the Defendant No.1 wishes to file a reply, it shall do so by 17th May, 2022. Department of Pharmaceuticals shall file a short affidavit on record by 17th May, 2022.

23. List the matter on 20th May, 2022 for consideration of the prayer for interim relief.

PRATHIBA M. SINGH, J.

MAY 11, 2022 Rahul/DK/SK