

Vifor International Ltd. & Anr vs Aishwarya Health Care Private Limited & ... on 24 March, 2023

Author: Sanjeev Narula

Bench: Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 167/2023

VIFOR INTERNATIONAL LTD. & ANR.

..... Plai

Through: Mr. Pravin Anand, Ms. Vaishali Mittal, Mr. Siddhant Chamola, Mr. Rohin Koolwal, Mr. Hersh Desai a Mr. Shivang Sharma, Advocates.

versus

AISHWARYA HEALTH CARE PRIVATE LIMITED & ORS.

..... Defend

Through: Mr. Sagar S. Jaiswal and Mr. Nivesh Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% 24.03.2023 I.A. No. 5772/2023 (seeking leave to file additional documents)

1. This is an application seeking leave to file additional documents under the Commercial Courts Act, 2015.

2. Plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the said Act.

3. The application stands disposed of.

I.A. No. 5773/2023 (seeking exemption from filing clearer copies or with exact margins and/ or typed copies of documents and for filing original of the relevant documents, etc.)

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

5. Plaintiffs shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.

6. Disposed of.

I.A. No. 5774/2023 (seeking exemption from filing court fees)

7. For the grounds and reasons stated therein, the time period for depositing court fees is enlarged by a period of two weeks from today.

8. Application is accordingly disposed of.

I.A. No. 5775/2023 (for exemption from filing notarized affidavits)

9. Exemption allowed, subject to all just exceptions.

10. The application is disposed of.

I.A. No. 5776/2023 (seeking exemption from the requirement of pre- institution mediation)

11. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.,¹ exemption from attempting pre- institution mediation is allowed.

12. Accordingly, the application stands disposed of.

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13. Let the plaint be registered as a suit.

14. Issue summons. Summons are accepted by Mr. Sagar S. Jaiswal, counsel for Defendants. Written statement(s) shall be filed within 30 days from today. Along with the written statement, the Defendants shall also file affidavit(s) of admission/denial of the documents of the Plaintiffs, without which the written statement(s) shall not be taken on record.

15. Liberty is given to the Plaintiffs to file replication(s) within 15 days of the receipt of the written statement(s). Along with the replication(s), if any, filed by the Plaintiffs, affidavit(s) of admission/denial of documents of the Defendants, be filed by the Plaintiffs, without which the replication(s) 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.

16. List before the Joint Registrar for marking of exhibits on 16th May, 2023. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

17. List before Court for framing of issues thereafter.

I.A. No. 5771/2023 (seeking interrogatories u/Order XI Rule 2 as amended by the Commercial Courts Act, 2015 r/w Section 151 of the Code of Civil Procedure, 1908)

18. Issue notice. Mr. Sagar S. Jaiswal, counsel for Defendants, accepts notice.

19. List on 18th August, 2023.

I.A. No. 5770/2023 (u/Order XXXIX Rules 1 & 2 r/w Section 151 of the Code of Civil Procedure, 1908)

20. Plaintiffs have filed the instant suit for permanent injunction restraining Defendants from infringing Plaintiff No. 1's patent titled "Water Neutral citation: 2022/DHC/004454.

Soluble Iron Carbohydrate Complex and a Process for Producing Water Soluble Iron Carbohydrate Complex" bearing Patent No. 221536 [hereinafter, "suit patent"], along with ancillary reliefs of delivery up, rendition of accounts, damages etc.

21. Plaintiffs' case, as set out in the plaint, is as follows:

21.1 Plaintiff No. 1, a company incorporated in Switzerland, is a global pharmaceutical company engaged in research, development, production and marketing of pharmaceutical products. It is a market-leader in iron replacement therapy and has created several products used in iron deficiency therapy. Plaintiff No. 2 is a licensee of Plaintiff No.1. 21.2 Plaintiff No. 1's invention - the suit patent, is a novel water-soluble iron carbohydrate complex known as "Ferric Carboxymaltose"/ "Iron Carboxymaltose", and the oxidation product of one or more maltodextrins.

"Ferric Carboxymaltose" is used for intravenous treatment of iron deficiency and iron deficiency anaemia, when oral preparations are ineffective or unusable. The suit patent is the first non-dextran iron complex and has manifold advantages such as advanced stability, easy sterilisation, reduced toxicity etc. 21.3 The International Non-proprietary Name ["INN"] of "Ferric Carboxymaltose" has been assigned by WHO to Plaintiff No. 1's invention, and has also been adopted by the US Adopted Names Council. "Ferric Carboxymaltose" was first approved for use and marketing in other countries in 2007, and is now available under a variety of brand names such as "Ferinject", "Injectafer", "Revofer" etc. In India, regulatory approval to the suit patent was granted in 2011 and Plaintiff No. 1 has been commercially using the same through Plaintiff No. 2 under the brands "Encicarb", "Ferium" and "Orofer".

21.4 The suit patent has been granted and affirmed by authorities across various jurisdictions, including the European Patent Office and the United States Patent and Trademark Office. In fact, Plaintiffs have obtained several decrees and injunction orders in their favour, restraining infringement of the suit patent, copies whereof have been annexed with the plaint. Thus, suit patent has acquired a worldwide reputation.

21.5 "Ferric Carboxymaltose" continues to be one of the most recommended therapies for iron deficiency anaemia worldwide, and Plaintiff No. 1 has collectively generated market sales of over

USD 1 billion in 2021.

22. Mr. Pravin Anand, counsel for Plaintiffs, submits that in February, 2023, they discovered that Defendants intended to launch a generic and infringing version of Plaintiffs' drug comprising "Ferric Carboxymaltose"

under the brand name "Ferocose FCM", around April, 2023. Production of this generic version, irrespective of the process used, infringes the suit patent.

23. Issue notice. Mr. Sagar S. Jaiswal, counsel appearing on advance service for Defendants, accepts notice.

24. Mr. Jaiswal states that the Defendants' products as well as their process of manufacturing thereof is different from the Plaintiffs. In any event, on instructions, he submits that at present, no such products are being manufactured by them.

25. Considering the foregoing, the Plaintiffs have made out a prima facie case in their favour and in case an ad-interim injunction is not granted, they will suffer an irreparable loss; balance of convenience also lies in favour of the Plaintiffs and against the Defendants.

26. Accordingly, till the next date of hearing, the Defendants and any persons acting on their behalf are restrained from manufacturing and selling products comprising of "Ferric Carboxymaltose" under any brand name, including "Ferocose FCM" or any other products which infringes the suit patent of Plaintiffs.

27. Reply be filed within four weeks from today. Rejoinder thereto, if any, be filed within three weeks thereafter.

28. List before the Court on 18th August, 2023.

SANJEEV NARULA, J MARCH 24, 2023 as