



IN THE HIGH COURT OF DELHI AT NEW DELHI

CS (OS) No. _____ of 2009

Bristol-Myers Squibb Company & ors.

Plaintiffs

vs. M. Adinarayan & ors.

Versees

... Defendants

MEMO OF PARTIES

1. Bristol-Myers Squibb Company
345 Park Avenue
New York, New York 10154-0037, USA

... Plaintiff No. 1

2. Bristol-Myers Squibb India Pvt Ltd,
1st Floor, "A" Block, Shivasagar Estate
Dr. Annie Besant Road, Worli,
Mumbai 400 018

... Plaintiff No. 2

1. Mr. M. Adinarayan
Company Secretary & G.M. (Corp. Affairs)
Nanco Pharma Limited
'NATCO HOUSE', Road No. 2,
Banjara Hills, Hyderabad - 500 033.

... Defendant No. 1

2. Nanco Pharma Limited
Nanco Pharma Limited
'NATCO HOUSE', Road No. 2,
Banjara Hills,
Hyderabad - 500 033

... Defendant No. 2

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#9

% 22.06.2012

Present: Mr Sudhanshu Batra, Sr. Adv. with Mr Pravin Anand,
Ms Archana Shanker and Ms Geetanjali, Advs. for the
petitioner.
Mr Chetan Sharma, Sr. Adv. with Mr Gaurav Barathi, Adv.
for the defendants.

LA No.11607/2012 (w/O XXXIX, Rule 1 & 2 CPC) in CS(OS)
No.2279/2009

Another application under Order XXXIX, Rule 1 & 2 CPC has been filed by the plaintiffs seeking prayer to restrain the defendants from manufacturing and selling the product 'DASANAT' or any other product that contains 'DASANATINIB' or any other way infringing plaintiffs' patent No.203937.

Mr Batra, the learned Senior counsel appearing on behalf of the plaintiffs, has pointed out that despite order passed on 13.06.2012 by the learned vacation Judge, the defendants have flooded the infringing goods of the plaintiffs' patent No.203937 and the said act of the defendants is also contrary to the order passed on 13.06.2012 as in the said order it was specifically mentioned that the defendants shall remain bound by the stand taken by them in their written statement, particularly in paras 26, 27 and 29. Therefore, the plaintiffs are pressing for interim order against the defendants.

Notice of this application has been accepted by the learned counsel for the defendants.

I have heard the learned counsel for the parties for some time. It appears from the pleadings that the plaintiffs have filed the suit for permanent injunction restraining infringement of registered Patent No.203937, unfair competition, damages, rendition of accounts and

delivery up etc. In the plaint, it is stated that the defendants intend to sell, distribute, advertise, export, offer for sale, dealing in the product which infringes the subject matter of the plaintiffs' patent No.203937. It is also stated in para 26 of the plaint that the defendants have applied for the grant of marketing approval for DASATINIB and intend to violate plaintiff's patent rights.

The defendants have denied the averments made by the plaintiffs in the plaint and it is stated in the written statement that the case of the plaintiffs is totally false and frivolous and they have no intention to infringe the patent of the plaintiffs and they have also not applied for the approval as alleged by the plaintiffs. In para 26-27 of the written statement, the defendants have denied that the defendants intend to sell, distribute, advertise or in any manner deal with the products that infringes patent No.203937.

Mr Chetan Sharma, learned Senior counsel appearing on behalf of the defendants, states that the product in question now launched by the defendants is not an infringement of plaintiffs' registered patent on the basis of which present suit has been filed. According to him, even the plaintiffs' product itself is not manufactured and sold under the patent granted in favour of the plaintiffs. He submits that the defendants have launched the product during the last week of May, 2012. The application filed by the plaintiff is not maintainable. Even otherwise, the trial in the matter has already started. Hence, the plaintiff is not entitled for interim order as prayed for.

Mr Batra, learned Senior counsel appearing on behalf of the plaintiffs, has refuted the submission of the learned Senior counsel for the defendants, by alleging that the defendants have not launched the product in the last week of May 2012 but during the month of June,

2012. He does not deny the fact that the present application is a third application under Order XXXIX, Rule 1 & 2 CPC and it has been filed by the plaintiffs due to the reason that despite of statement made in the written statement and order passed on 13.06.2012 in I.A. No.11521/2012, during the summer vacation of court the defendants have flooded the market with infringing products. As the case of the defendants is that they are not infringing the plaintiffs' registered patent, the Court should pass order against the defendants only not to infringe the impugned patent, which is registered in favour of the plaintiffs.

Four weeks' time is granted to the defendants to file the reply. Rejoinder be filed by the plaintiffs by the next date of hearing. List the application on 01.08.2012 before the roster bench.

Considering the overall facts and circumstances of the case and the statement made, in the meanwhile, the defendants are restrained from manufacturing and selling the product which infringes the plaintiffs' registered patent No.203937 in any manner.
Order be given *dasu* to both parties as prayed for.

Sd/-
(MANMOHAN SINGH)
VACATION JUDGE

Time 10/17

JUNE 22, 2012/jk

