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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

*(Ordinary Original Civil Jurisdiction)*

I.A. No. 22948 of 2012

In

C.S. (O.S.) 2475 of 2012

**IN THE MATTER OF:**

Natco Pharma Ltd.

...Plaintiff


*Versus*

Shamnad Basheer

...Defendant

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New Delhi  
Date: December 17, 2012

  
TMT LAW PRACTICE  
Advocates for the Defendant  
C-2/39, Safdarjung Development Area,  
New Delhi-110016  
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Diary No. 200550  
17/12/2012

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

*(Ordinary Original Civil Jurisdiction)*

I.A. No. *22948* of 2012

In

C.S. (O.S.) 2475 of 2012

**IN THE MATTER OF:**

Natco Pharma Ltd.

...Plaintiff

*Versus*

Shamnad Basheer

...Defendant

**APPLICATION ON BEHALF OF THE DEFENDANT UNDER  
ORDER VII RULE 11 READ WITH SECTION 151 OF C.P.C. FOR  
REJECTION OF PLAINT**

**THE DEFENDANT MOST RESPECTFULLY SUBMITS AS UNDER:**

**PRELIMINARY OBJECTIONS:**

1. The plaintiff has filed the present suit against the defendant for defamation and libel, permanent injunction and other reliefs. It is stated that the plaint is liable to be rejected in accordance with the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908, as the plaint fails to disclose a cause of action against the defendant.

2. Without prejudice to the Defendant's assertion that the instant suit lacks jurisdiction and is liable to be returned on that count, it is stated that the plaint fails to disclose the publication of the impugned articles within Delhi as is required by settled law. It is noteworthy that the plaint does not disclose who or which person or persons "downloaded the articles at Delhi, read the same and expressed shock at reports" allowing the Plaintiff to claim that the

said defamation occurred in Delhi. The Plaintiff is therefore liable to be rejected on this ground.

3. It is further submitted that apart from merely reproducing the various statements of the Defendant in the two impugned articles on SpicyIP, the Plaintiff has not made any attempt to demonstrate the falsity of these statements. Nowhere in the suit does the Plaintiff disclose as to why the impugned statements are obviously false or untrue or not based on facts or not representative of a fair comment on an existing set of facts. It is respectfully stated that merely alluding to statements being defamatory would not even prima facie make them so, especially in the face of pending contempt proceedings in relation to the very same facts (as contained in the impugned article).

4. It is stated that the impugned statements made by the Defendant are justified being in the nature of '*Fair Comment*' as is apparent from a perusal of the written statement. The Defendant expressed an independent academic view that was based on facts admitted to by the Plaintiff and culled out from the very same pleadings filed by the Plaintiff. It is clear that the comments were fair, based upon facts, entirely of an academic nature and with no malice towards the Plaintiff herein, particularly since the Defendant has in the past, lavished praise on the Plaintiff herein for its bold compulsory licensing strategy, an aspect detailed in the written statement.

5. As per Order VII Rule 11 of C.P.C., a plaint shall be rejected where it 'does not disclose a cause of action'. Further, the deliberate suppression of facts and statements made in support of the Plaintiff by the Defendant in earlier cases is indicative of Plaintiff's mala fide

intentions. The plaint is liable to be rejected on this ground of this suppression alone.

6. It is also noteworthy that SpicyIP articles deal intricately with the various nuances of intellectual property issues, and the website commands a sophisticated reader base including intellectual property practitioners, academicians, researchers and other professionals interested in Intellectual Property issues in India. This application is filed *bona fide* and for the ends of justice and grave prejudice and harm would be caused to the Applicant in the event the present application is not allowed. It is also submitted that the question of rejection of a plaint has to be decided on the touchstone of Order VII Rule 11 of the CPC which provides that a plaint be rejected if no cause of action is disclosed. In the present case, the plaintiff has failed to disclose a cause of action and the suit is liable to be rejected.

**PRAYER:**

7. In the facts and circumstance of the present case, the defendant humbly prays that this Hon'ble Court:

- a) Reject the plaint;
- b) Order costs in favour of the Defendant
- c) Pass any other order this Hon'ble Court deems fit in the facts and circumstances of the present case.



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It is prayed accordingly

Mr. Shamnad Basheer

(Defendant)

Through

Kolkata

TMT Law Practice

Date: December 12, 2012

Advocates for the Defendant

*[Handwritten signature]*

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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

*(Ordinary Original Civil Jurisdiction)*

I.A. No. of 2012

In

C.S.(OS) 2475 of 2012



Matco Pharma Ltd.

...Plaintiff

*Versus*

Shamnad Basheer

...Defendant



**Affidavit of Mr. Shamnad Basheer, age about 36 years, S/o Mr. M. M. Basheer, R/o National University of Juridical Sciences, Salt Lake, Sector III, 12 LB Block, Kolkata - 700098**

I, the above named deponent, do hereby solemnly affirm and declare as under:

1. I am the Defendant in the present matter and am conversant with the facts and circumstances of the present case. I am authorised and competent to swear and depose this affidavit.
2. I have read the contents of the accompanying application under Order 7 Rule 11 read with Section 151 of C.P.C. and say that the same are true to the best of my knowledge and derived from records maintained by me.
3. I say that I adopt the contents of the accompanying applications part and parcel of my present affidavit as the same are not reproduced herein for the sake of brevity.

*[Handwritten signature]*  
**DEPONENT**

**VERIFICATION:**

Verified at Kolkata on this, the 12<sup>th</sup> day of December, 2012 that the contents of paragraphs 1 to 3 of my above affidavit are true to my knowledge and nothing material or relevant has been concealed there from.

*[Handwritten signature]*  
**DEPONENT**

**Notary Seal:**  
S. PODDAR  
Notary,  
18/04  
Cal-87

12 DEC 2012

IN THE HIGH COURT OF DELHI AT NEW DELHI  
(Ordinary Original Civil Jurisdiction)

I.A No.22948 OF 2012  
IN  
CS (OS) NO. 2475 OF 2012

**IN THE MATTER OF:**

NATCO Pharma Ltd. .... Plaintiff

**VERSUS**

Shamnad Basheer ....Defendant

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PLAINTIFF  
(Constituted attorney)

THROUGH



GAURAV BARATHI  
(COUNSEL FOR THE PLAINTIFF)  
GLA LAW OFFICES  
C-129, 2<sup>ND</sup> FLOOR  
LAJPAT NAGAR-I  
NEW DELHI-110024  
PH: 46569494, 9810526981

DATED:  
PLACE:

Recd on  
13/3/2013  
[Signature]

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

I.A No.22948 OF 2012  
IN  
CS (OS) NO. 2475 OF 2012

**IN THE MATTER OF:**

NATCO Pharma Ltd. .... Plaintiff

VERSUS

Shamnad Basheer ....Defendant

**REPLY ON BEHALF OF THE PLAINTIFF TO THE  
APPLICATION FILED BY THE DEFENDANT UNDER ORDER  
VII RULE 11 READ WITH SECTION 151 OF C.P.C., 1908.**

**MOST RESPECTFULLY SHOWETH:**

At the outset the plaintiff denies all averments of the defendant,  
except those which are specifically admitted herein below:

1. That the contents of the paragraph no.1 of the application are not denied to the extent that the Plaintiff has filed the present Suit against the defendant for defamation, permanent injunction and other reliefs. Rests of the contents of the paragraph under reply are incorrect, misleading and misconceived, hence vehemently denied. It is specifically denied that the plaint is liable to be rejected in accordance with the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908. It is further denied that plaint fails to disclose a cause of action against the defendant. It is submitted that publication of defamatory



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material on a website is a publication sufficiently furnishing a cause of action against the defendant.

2. That the contents of the paragraph no.2 of the application are incorrect, misleading and misconceived, hence vehemently denied. It is denied that plaintiff fails to disclose the publication of the impugned articles within Delhi. It is further denied that plaintiff does not disclose who or which person or persons downloaded the articles at Delhi, read the same and expressed shock at reports allowing the plaintiff to claim that the said defamation occurred in Delhi. It is vehemently denied that plaintiff is liable to be rejected on this ground. It is submitted that the defamatory material was read and downloaded by the Plaintiff at Delhi. Likewise, the same material was also widely read by the public at Delhi, therefore, it is wrong to say that there is no cause of action or that this Hon'ble Court has no jurisdiction to try and entertain the present Suit.

3. That the contents of the paragraph no.3 of the application are incorrect, misleading and misconceived, hence vehemently denied. It is denied that apart from merely reproducing the various statements of the Defendant in the two impugned articles on SpicyIP, the Plaintiff has not made any attempt to demonstrate the falsity of these statements. It is further denied that nowhere in the Suit

plaintiff disclose as to why the impugned statements are obviously false or untrue or not based on facts or not representative of a fair comment on an existing set of facts. It is further denied that Plaintiff has merely alluded to statements being defamatory. It is submitted that plaintiff has sufficiently disclosed the cause of action and plaintiff has a good prima facie case in its favour. It is further submitted that Plaintiff has mentioned in the Plaint, including in paragraph 13, that defamatory statements of the Defendant are blatantly false.

4. That the contents of the paragraph no.4 of the application are incorrect, misleading and misconceived, hence vehemently denied. It is denied that the impugned statements made by the Defendant are justified being in the nature of 'Fair Comment'. It is further denied that the Defendant expressed an independent academic view that was based on facts admitted to by the plaintiff and culled out from the very same pleadings filed by the Plaintiff. It is vehemently denied that comments were fair, based upon facts, entirely of an academic nature and with no malice towards the Plaintiff herein. It is submitted that the impugned statements of the Defendant are defamatory in nature and the same do not qualify as 'Fair Comments'. The same are laden with falsity and published to defame the Plaintiff and also to influence the fair trial of CS (OS)

2279 of 2009 by projecting the Plaintiff herein as contemnor and liar. A comment cannot be said as a fair comment which is vindictive in nature and in the form of final verdict on issues yet to be decided by this Hon'ble Court. The Defendant with a malafide intention pronounced his judgment pertaining to issues pending before this Hon'ble Court in CS (OS) 2279 of 2009, which are yet to be adjudicated by the Hon'ble Court. The Defendant, by publishing the false and malicious statements, has projected the Plaintiff (Defendant in CS (OS) 2279 of 2009) as a culprit and contemnor. By publishing these defamatory statements, the Defendant has maligned the hard earned reputation of the Plaintiff.

5. That the contents of the paragraph no.5 of the application are incorrect, misleading and misconceived, hence vehemently denied. It is vehemently denied that plaintiff does not disclose cause of action. It is further denied that plaintiff has suppressed any material facts, whatsoever. It is further denied that the Plaintiff has filed the present suit with a malafide intention. It is further denied that the present Suit is liable to be rejected on any ground as pleaded by the Defendant. It is submitted that defendant has miserably failed to furnish any ground in the present application and the Defendant only wants to delay the proceedings by filing such frivolous applications.

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6. That the contents of the paragraph no.6 of the application are incorrect, misleading and misconceived, hence vehemently denied. It is denied that the present application has been filed with bona fide intention and for the ends of justice. It is further denied that grave prejudice and harm would be caused to the Applicant in the event the present application is not allowed. It is submitted that defendant has miserably failed to furnish any ground in the present application and the Defendant has filed the present application with a malafide intention to delay the proceedings.


**REPLY TO THE PRAYER:**

7. In reply to the prayer clause it is submitted that in the facts and circumstances as mentioned in the Plaint, replication and the present reply, it is respectfully prayed that this Hon'ble Court may be pleased to dismiss the present application with exemplary cost.

THROUGH

Kd  
Kd

PLAINTIFF  
(Constituted attorney)

  
for GAURAV BARATHI  
(COUNSEL FOR THE PLAINTIFF)  
GLA LAW OFFICES  
C-129, 2<sup>ND</sup> FLOOR,  
LAJPAT NAGAR-I  
NEW DELHI-110024

Dated:

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
I.A. No. 22948 OF 2012  
IN  
CS(OS) NO. 2475 OF 2012

**IN THE MATTER OF:**

NATCO Pharma Ltd.

.... Plaintiff

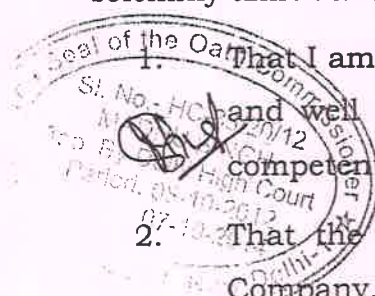
**VERSUS**

Shamnad Basheer

....Defendant

**AFFIDAVIT**

I, Udaya K., S/o Sh. Narasimha Rao K., Aged about 39 years, R/o 179-A, Gali No.3, 2<sup>nd</sup> Floor, Tughalakabad Extn., New Delhi, and working with the Plaintiff Company as an Executive, do hereby solemnly affirm and state as under:



1. That I am the Authorized Signatory of the Plaintiff Company and well conversant with the facts of the case and hence competent to depose this affidavit.

2. That the accompanying reply, being filed by the Plaintiff Company, has been drafted under my instructions.

3. I have read and understood the contents of the accompanying reply and the same are true and correct to the best of my knowledge and belief based on the records of the Plaintiff Company.

*(Signature)*  
I have verified the deponent who has signed in my presence.

*(Signature)*

DEPONENT

**VERIFICATION** 113 0 3 , 3

Verified at New Delhi on 13<sup>th</sup> day of March 2013 that the contents of the above affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

CERTIFIED THAT THE DEPONENT

113 0 3 , 3  
Udaya K. S/o Narasimha Rao K.  
Identified by Shri. [Signature]  
solemnly affirmed before me at Delhi  
on [Date] as Sl. No. [Number]  
that the contents of the affidavit which  
has been read over and explained to him  
are true and correct to the best of my  
Oath Commissioner, New Delhi

*(Signature)*

DEPONENT