

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

I.A No.23367 OF 2012
IN
CS (OS) NO. 2475 OF 2012

IN THE MATTER OF:

NATCO Pharma Ltd.

.... Plaintiff

VERSUS

Shamnad Basheer

....Defendant

INDEX

<u>Sl. No.</u>	<u>Particulars</u>	<u>Page No.</u>
1.	Reply on Behalf of the Plaintiff to the Application filed by the Defendant under Order VII Rule 10 read with Section 151 of the Code of Civil Procedure, 1908.	1-8

PLAINTIFF
(Constituted attorney)

THROUGH

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

DATED:
PLACE:

*Recd
on 13/3/2013
A.*

IN THE HIGH COURT OF DELHI AT NEW DELHI

I.A No.23367 OF 2012
IN
CS (OS) NO. 2475 OF 2012

IN THE MATTER OF:

NATCO Pharma Ltd. Plaintiff

VERSUS

Shamnad BasheerDefendant

**REPLY ON BEHALF OF THE PLAINTIFF TO THE
APPLICATION FILED BY THE DEFENDANT UNDER ORDER
VII RULE 10 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 returned in accordance with the provisions of Order VII Rule 10 of the Code of Civil Procedure, 1908. It is further denied that this Hon'ble Court is not clothed with the jurisdiction to try and entertain the instant Suit. It is submitted that

publication of defamatory material on a website is a publication sufficiently furnishing a cause of action against the defendant. It is further submitted that since the defamatory material was read and downloaded by the Plaintiff at Delhi, the cause of action has arisen within the territorial Jurisdiction of this Hon'ble Court. Further, the same material published on the website www.spicyip.com was widely read by public at Delhi also, thereby clothing this Hon'ble Court to try and entertain the present Suit. It is wrong to say that this Hon'ble Court has no jurisdiction to try and entertain the present Suit.

2. That the contents of the paragraph no.2 of the application are incorrect, misleading and misconceived, hence vehemently denied. It is vehemently denied that cause of action did not arise within the territorial jurisdiction of this Hon'ble Court. It is further denied that the impugned article was not published at Delhi. It is further denied that the instant Suit is a device to browbeat and suppress fair and justifiable comments on the Plaintiffs own actions. It is vehemently denied that the instant Suit is a gross abuse of the process of law. It is submitted that publication of defamatory material on a website is a publication sufficiently furnishing a cause of action against the defendant. It is further submitted that since the defamatory material was read and downloaded by the

Plaintiff at Delhi, the same material was also widely read by public at Delhi; it is wrong to say that this Hon'ble Court has no jurisdiction to try and entertain the present Suit. It is further wrong to suggest that since the website www.spicyipindia.blogspot.in is an online publication and does not specifically target Delhi, hence the Defendant cannot be said to have purposefully availed himself of the jurisdiction of this Hon'ble Court by specifically targeting the territory of Delhi. It is respectfully submitted that law requires: - a Suit can be instituted at any place where cause of action arises, partly or fully, irrespective of fact whether the place was specifically targeted or not. It is further submitted that the false, malicious and defamatory comments (which are subject matter of the present Suit) have been made by the Defendant against the Plaintiff herein in respect of an ongoing Patent Suit pending in Delhi High Court where the present Plaintiff is a Defendant. Thus it is wrong and misleading to suggest that the online publication of the Defendant does not specifically target Delhi or the Defendant has not purposefully availed himself of the Jurisdiction of this Hon'ble Court. It is further submitted that the place of uploading the article has nothing to do with the cause of action or territorial Jurisdiction of this Hon'ble Court. The filing of the present application by the Defendant is gross

4

misuse of process of law as the same is totally frivolous in nature hence liable to be dismissed.

3. That the contents of the paragraph no.3 of the application are incorrect, misleading and misconceived, hence vehemently denied. It is denied that plaintiff fails to disclose the publication in the sense of actual circulation 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 at Delhi. It is further denied that the plaintiff is liable to be rejected on this ground. It is submitted that plaintiff has sufficiently disclosed the cause of action which arose within the territorial jurisdiction of this Hon'ble Court. It is further submitted that it is well settled rule of pleading that every pleading shall contain and only contain, a statement in a concise form of the material facts but not the evidence which needs to be led and proved during the course of trial. However, the Defendants by raising such frivolous pleas in the paragraph under reply, has, in fact, asked the Plaintiff to prove his case at this premature stage, which is not permissible under the process of law.

4. That the contents of the paragraph no.4 of the application are incorrect, misleading and misconceived and mere

5

repetition, hence vehemently denied. It is submitted that plaintiff has sufficiently disclosed the cause of action which arose within the territorial jurisdiction of this Hon'ble Court. It is further submitted that it is well settled rule of pleading that every pleading shall 'only contain a statement in a concise form of the material facts but not the evidence by which they are to be proved. However, the Defendants by raising such frivolous pleas in the paragraph under reply, has, in fact, asked the Plaintiff to prove his case at this premature stage, which is not allowed under the law.

5. That the contents of the paragraph no.5 of the application are incorrect, misleading and misconceived, hence vehemently denied. It is submitted that the CS (OS) No. 2279/2009 has different facts in comparison to the present case with altogether different subject matter. The Plaintiff's averments qua territorial jurisdiction in the two cases cannot be read together and hence question of contradictory statements of plaintiff does not arise at all.
6. That the contents of the paragraph no.6 of the application are incorrect, misleading and misconceived, hence vehemently denied. It is specifically denied that Plaintiff has not been able to demonstrate, as to how any part of the cause of action has arisen within the jurisdiction of this Hon'ble Court. It is further denied that the Plaintiff is

6

liable to be returned under Order VII rule 10 of C.P.C. It is submitted that Plaintiff has sufficiently shown and averred in the plaint and more specifically in para no. 23 as to how cause of action arose within the territorial jurisdiction of this Hon'ble Court and hence this Hon'ble Court has jurisdiction to entertain and try the present Suit.

7. That the contents of the paragraph no.7 of the application are incorrect, misleading and misconceived, hence vehemently denied. It is specifically denied that the present Suit is bad for non-joinder of necessary parties. It is submitted that the defamatory material was authored and published by the Defendant on the website www.spicyip.com and the defendant's defamatory statement was also quoted by the newspapers like Economic Times and Times of India, therefore, defendant alone is the only necessary and proper party to the present case.

8. That the contents of the paragraph no.8 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

7

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:

9. 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.

KJ

PLAINTIFF
(Constituted attorney)

THROUGH


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

DATED:
PLACE:

[Handwritten mark]

IN THE HIGH COURT OF DELHI AT NEW DELHI
I.A. No. 23367 OF 2012
IN
CS(OS) NO. 2475 OF 2012

IN THE MATTER OF:

NATCO Pharma Ltd.

.... Plaintiff

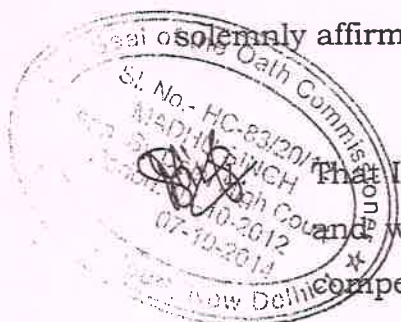
VERSUS

Shamnad Basheer

....Defendant

AFFIDAVIT

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



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.

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

[Handwritten signature]
I identified the deponent who has signed in my presence.

[Handwritten signature]

DEPONENT

VERIFICATION: 0313

Verified at New Delhi on 13th 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

30313 Udaya K. S/o Narasimha Rao K.
R/o
Identified by Sh.
solemnly affirmed before me at Delhi
on as SL: No.
that the contents of the affidavit which
has been read over and explained to him
are true and correct to his knowledge.
Cath. Commissioner New Delhi

[Handwritten signature]

DEPONENT