

IN THE HIGH COURT OF DELHI AT NEW DELHI  
(Ordinary Original Civil Jurisdiction)  
CS(OS) NO. 2475 OF 2012

**IN THE MATTER OF:**

NATCO Pharma Ltd.

.... Plaintiff

**VERSUS**

Shamnad Basheer

....Defendant

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PLAINTIFF  
(Through constituted attorney)

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THROUGH



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PLACE: Delhi

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

**IN THE MATTER OF:**

NATCO Pharma Ltd. .... Plaintiff

**VERSUS**

Shamnad Basheer ....Defendant

**REPLICATION ON BEHALF OF THE PLAINTIFF TO THE  
WRITTEN STATEMENT OF THE DEFENDANT**

**REPLICATION TO THE PRELIMINARY OBJECTIONS:**

1. That the contents of paragraph nos.1 & 2 of the preliminary objections are incorrect and misleading, hence vehemently denied. It is specifically denied that the instant plaint is liable to be returned in accordance with the provisions of Order VII Rule 10 of the Code of Civil Procedure, 1908, as this court is not clothed with the jurisdiction to try and entertain the instant Suit. It is further 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 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 widely read by public at Delhi also, 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](http://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 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.

2. That the contents of paragraph no.3 of the preliminary objections are incorrect and misleading, hence vehemently denied. It is specifically denied that the Plaintiff has failed to discharge the burden cast by the Indian Evidence Act. It is submitted that defendant does not have any ground to file an application under Order VII Rule 10 of the Code of Civil Procedure, 1908 seeking return/rejection of the plaint. It is submitted that defendant wants to delay the proceedings by filing frivolous applications.
  
3. That the contents of paragraph no.4 of the preliminary objections are incorrect and misleading, hence vehemently denied. It is submitted that the CS (OS) No. 2279/2009 has different facts in comparison to the present case with a altogether different subject matter. The Plaintiff's

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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.

4. That the contents of paragraph no.5 of the preliminary objections are incorrect and misleading, hence vehemently denied. It is specifically denied that the instant Suit has not been instituted by a person duly authorized by the Plaintiff Company and hence liable to be dismissed. It is submitted that a perusal of the Board Resolution dated 28<sup>th</sup> May 2012, enclosed with the Plaint negates the averments of the Defendant regarding authority of Mr. Jagbir Sharma to verify and institute the present Suit.

5. That the contents of paragraph no.6 of the preliminary objections are incorrect and misleading, 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 himself on the website [www.spicyip.com](http://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.

6. That the contents of paragraph no.7 of the preliminary objections are incorrect, misconceived and misleading, hence vehemently denied. It is specifically denied that the plaint is liable to be rejected under Order VII Rule 11 of

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Code of Civil Procedure, 1908. It is further denied that Plaintiff fails to disclose a cause of action against the Defendant. It is further denied that Plaintiff has not made any attempt to demonstrate the falsity of these statements. It is further denied that 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 submitted that Plaintiff has mentioned in the Plaint, including paragraph 13, that defamatory statements of the Defendant are blatantly false.

7. That the contents of paragraph no.8 of the preliminary objections, are incorrect, misconceived and misleading, hence vehemently denied. It is specifically denied that the impugned statements made by the Defendant are justified being in the nature of 'Fair Comment'. 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.
8. That the contents of paragraph no.9 of the preliminary objections are incorrect and misleading, hence vehemently denied. It is vehemently denied that Defendant offered his

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opinion by way of fair comment. It is further denied that Defendant expressed a view which was academic in nature. It is submitted that Defendant intentionally 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 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.

9. That the contents of paragraph no.10 of the preliminary objections are incorrect and misleading, hence vehemently denied. It is denied that the impugned articles are balanced with regard to the issues presented and opinion accorded, based solely on facts found in the pleadings of the parties in the BMS Suit and the orders passed therein. It is further denied that all statements/opinion appearing in the impugned articles are based on the pleadings and orders, which are a matter of record and hence are protectable as fair comment, in accordance with settled law, both in India as also other common law jurisdictions such as the UK. It is submitted that 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 decide by this Hon'ble Court. The pleadings and documents on the record are privileged documents not accessible to the

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general public during the pendency of the matter. However, the Defendant's successful endeavor to have access to those pleadings and thereafter giving a final verdict in media thereby proclaiming the plaintiff as contemnor, liar etc. shows as to how the Defendant has been calculative in defaming the plaintiff. Further, mere issuance of show-cause notice to the plaintiff herein by this Hon'ble Court in the contempt petition filed by BMS does not give any right to the Defendant to proclaim the Plaintiff as contemnor.

10. That the contents of paragraph no.11 of the preliminary objections are incorrect and misleading, hence vehemently denied. It is denied that the Defendant has any authority to access / examine the privileged documents like pleadings of an ongoing case, publish the photocopy of the entire pleadings on its website and thereafter passing malicious and defamatory comments over the pleadings in an unwarranted and objectionable manner. It is submitted that defendant is an academician (as claimed by him) and not a Judge seized with the matter and therefore, he has no authority to pronounce any verdict (which is based on incorrect facts) and publish the same with a view to defame the Plaintiff. The Plaintiff assails his right as an academician or otherwise as a citizen to make defamatory comments in the garb of so called 'fair comment'. It is further denied that fundamental guarantees under Article 19 and 21 of the

Constitution of India gives the Defendants any right to defame the plaintiff. It is noteworthy that even fundamental rights enshrined under Articles 19 and 21 are subject to certain reasonable restrictions. Right to life of the Defendant does not give him any right to trample hard earned dignity (which forms integral part of right to life guaranteed under Article 21 of the Constitution of India) of the Plaintiff.

11. That the contents of paragraph no.12 of the preliminary objections are denied to the extent that attendant conduct and litigation strategy of the parties is a matter of public interest. It is submitted that, in the garb of public interest, no one has the right to publish his own verdict in an ongoing case and make malicious and defamatory allegations on one of the parties.

12. That the contents of paragraph no.13 of the preliminary objections are misleading, hence vehemently denied. It is submitted that publication of articles elsewhere, if any, pertaining to dispute, that is subject matter of BMS Suit, does not give the Defendant a right to defame the Plaintiff. It is submitted that there is a huge difference between a News Report (giving a true and correct report of events) and an article containing false, malicious, derogatory and defamatory contents. The articles written and published by the Defendant falls in the latter category.



13. In reply to the paragraph no.14 of the preliminary objections, it is submitted that Defendant cannot justify its defamatory act by taking the plea that it had once appreciated or supported the act of the plaintiff in the past.

14. That the contents of paragraph no.15 of the preliminary objections are incorrect and misleading, hence vehemently denied. It is specifically denied that the Plaintiff has suppressed any fact relevant in the present Suit. It is further denied that Defendant has a role of a neutral and academic commentator of drug and patent issues. It is vehemently denied that Plaintiff's allegation of "collusion" is both baseless and malicious, with a view to painting a negative picture of the Defendant before the court. It is submitted that Defendant has reproduced certain contents of article dated August 2, 2012 which has already been placed on record before this Hon'ble Court by the Plaintiff. Therefore, question of suppression of any fact does not arise, at all. It is further submitted that allegation of the plaintiff regarding collusion between BMS and the Defendant is writ large as the Defendant got the copy of Pleadings from BMS only and uploaded the same on its website with a link in the impugned articles. It is submitted that Defendant could not have access to the pleadings legally and there is only one source; i.e. BMS, from whom the Defendant got the copy of the pleadings

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and purposefully uploaded it on its website with its false and defamatory article.

15. That the contents of paragraph no.16 of the preliminary objections are incorrect and misleading, hence vehemently denied. It is vehemently denied that Plaintiff seeks media attention from time to time to get benefit from news reporting around its successful litigations such as the Bayer Compulsory Licensing dispute. It is further denied that plaintiff attempts to crush and quell any statement that exposes its misgivings in such patent disputes. It is further denied that Plaintiff is not open to accept its critiques. It is further denied that plaintiff chooses to benefit from public attention on its various cases. It is submitted that Plaintiff is always ready to accept unbiased and neutral comments; however, at the same time it cannot allow any person including Defendant to purposefully tarnish its hard earned reputation.

16. That the contents of paragraph no.17 of the preliminary objections need no reply.

17. That the contents of paragraph no.18 of the preliminary objections are incorrect and misleading, hence vehemently denied. It is specifically denied that the present Suit is liable to be dismissed *in limine*.

**REPLICATION TO THE PARAWISE REPLY:**

1. That the contents of paragraph no.1 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of the plaint.
2. That the contents of paragraph no.2 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.2 of the plaint.
3. That the contents of paragraph no.3 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.3 of the plaint.
4. That the contents of paragraph no.4 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.4 of the plaint.
5. That the contents of paragraph no.5 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.5 of the plaint.
6. That the contents of paragraph no.6 of the parawise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.6 of the plaint. It is submitted that order dated June 13, 2012 is not an injunctive order for various reasons which

includes: that the said order was not passed after considering the three *sine-qua-non* elements, i.e., Prima facie case, Balance of convenience and Irreparable loss of the applicant. From the contents of the paragraph of para-wise reply, it seems that Defendant is keenly interested in defending CS (OS) No. 2279/2009 through his written statement in the present Suit.

7. That the contents of paragraph no.7 & 8 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no. 7 & 8 of the plaint. The Plaintiff is not concerned that the Defendant appreciated or criticized anyone in the past. The present suit is related to the two impugned articles only, contents of which are not only false, but malicious and published with a view to tarnish the reputation of the Plaintiff. The Defendant's plea of its past conduct in appreciating or criticizing a party has no basis in law.
8. That the contents of paragraph no.9 of the para-wise reply are matter borne out of the record before this Hon'ble Court and hence need no reply.
9. That the contents of paragraph no.10 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.9 of the plaint.

10. That the contents of paragraph no.11 of the parawise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of plaint and that of this replication. It is denied that plaintiff has filed a vexatious and frivolous Suit with a view to desperately silencing an academic critic from highlighting the fact that it actively misled a court of law. It is further denied that Plaintiff has made any admission as alleged.

11. That the contents of paragraph no.12 of the parawise reply are incorrect and misleading hence denied. It is denied that Plaintiff has no sought any specific relief on this count. It is vehemently denied that impugned article of the Defendant comes under the definition of fair reporting. Further, the judgment of Hon'ble Supreme Court in Sahara case is completely in favour of the Plaintiff and the reliance of the Defendant on the same is misplaced, with a view to mislead this Hon'ble Court.

12. That the contents of paragraph no.13 of the parawise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.11 of the plaint.

13. That the contents of paragraph no.14 of the parawise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.12 of the plaint.

14. That the contents of paragraph no.15 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.13 of the plaint. It is denied that the Defendant is a leading academic and comments in that capacity. It is further denied that impugned comment of the Defendant is a fair comment. It is further denied that plaintiff's claim is not relevant in the instant proceedings. It is submitted that instant proceeding is not only a case against defamation, but it is also for certain other relief like for permanent injunction etc.

15. That the contents of paragraph no.16 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.14 of the plaint.

16. That the contents of paragraph no.17 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.15 of the plaint.

17. That the contents of paragraph no.18 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.16 of the plaint. The claim of Defendant about his reputation and expertise is denied for the want of knowledge and the Defendant be put to strict proof of the same.

18. That the contents of paragraph no.19 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.17 of the plaint. It is denied that source of the pleading is legitimate and from a reliable source. It is reiterated that Defendant obtained the pleadings from BMS only.
19. That the contents of paragraph no.20 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.18 of the plaint and that of contents of this replication.
20. That the contents of paragraph no.21 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.19 of the plaint and that of contents of this replication.
21. That the contents of paragraph no.22 of the para-wise reply are incorrect and misleading hence denied. It is denied that Plaintiff's claim lack even the barest of particulars to be reliable. It is further denied that plaintiff has offered no basis for calculating damages and accordingly such unsubstantiated claim is liable for outright rejection. It is further denied that Plaintiff Suit is an attempt to muzzle fair comments, a gross abuse of the process of this Hon'ble Court and is liable to be dismissed. The Plaintiff reiterates and reaffirms the contents of paragraph no.20 of the plaint and of this replication.

22. That the contents of paragraph no.23 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.21 & 22 of the plaint and that of contents of this replication.
23. That the contents of paragraph no.24 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff reiterates and reaffirms the contents of paragraph no.23 of the plaint and that of contents of this replication in the preceding paras.
24. That the contents of paragraph no.25 of the para-wise reply are incorrect and misleading hence denied. It is denied that the Suit has been deliberately over-valued so as to invoke the jurisdiction of this Court. It is further denied that the Plaintiff is not entitled to any damages and as such this suit may be dismissed on this ground alone. The Plaintiff reiterates and reaffirms the contents of paragraph no.24 of the plaint.
25. That the contents of paragraph no.26 of the para-wise reply are incorrect and misleading hence denied. The Plaintiff prays to this Hon'ble Court for the relief sought under paragraph no.25 of the plaint.
26. That the contents of paragraph no.27 of the prayer clause of the written statement are baseless and hence it is submitted that the Defendant is not entitled for any relief as sought for.



In the facts and circumstances as mentioned in the plaint and this replication the Plaintiff prays to this Hon'ble Court to reject the defence of the Defendant and to decree the Suit in favour of the plaintiff by allowing the relief sought in the plaint.



PLAINTIFF  
(Through constituted attorney)

THROUGH

*for*

GAURAV BARATHI  
(COUNSEL FOR THE PLAINTIFF)  
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LAJPAT NAGAR-I  
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PH: 46569494, 9810526981

DATED: 17/12/12  
PLACE: Delhi

**VERIFICATION:**

Verified at New Delhi on this      day of December 2012, that the contents of this replication are true and correct to my best of my knowledge and belief which is based on record maintained by the Plaintiff Company in its ordinary course of business.



PLAINTIFF  
(Through constituted attorney)

IN THE HIGH COURT OF DELHI AT NEW DELHI  
(Ordinary Original Civil Jurisdiction)  
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 replication being filed by the Plaintiff Company has been drafted under my instructions. I have read and understood the contents of the accompanying replication and the same are true and correct to the best of my knowledge and belief based on the records of the Plaintiff Company.

Signature of Udaya K. and a circular stamp of the High Court of Delhi.

*Handwritten initials*

DEPONENT

**VERIFICATION:**

Verified at New Delhi on \_\_\_\_\_ day of December 2012 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.

Signature of the deponent and a circular stamp of the High Court of Delhi.

*Handwritten initials*

DEPONENT

17 DEC 2012