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Settlement and Matter of Extreme Concern in the Natco Defamation Case

2 messages

Shamnad <shamnad@gmail.com>

21 November 2014 at 17:00

To: anandgrover@gmail.com

Cc: rajasekhar Rao' <rao.rajshekhar@gmail.com>, Sai Vinod <nayanisaivinod@gmail.com>, Gopal Sankaranarayanan <gsanks@gmail.com>

To: Mr Anand Grover

Senior Counsel

Dear Anand:

I hope this finds you well. I want to thank you again for going out of your way to settle this matter between Natco and me.

I know that you represent Natco in other litigations and would have ordinarily been averse to speaking to you on this issue, given the perceived bias. But I agreed to do so, only because I have utmost faith in your integrity and sense of justice and fair play. Had this been any other person, I would have declined to engage on this issue.

Let me now come to the matter at hand. I must say that I was completely shocked by the conduct of Natco's counsel, Ms Rajeshwari Hariharan during the last hearing in court (16.10.2014), when instead of appraising the court on the status of the settlement talks, she pushed for an injunction, leaving my counsels utterly shocked. It took them a while to regain their composure and express their sense of dismay to the court at this sudden volte face by counsel, who knew perfectly well that we were engaged in settlement talks and that it had not concluded, one way or the other.

Background and Natco's Defamation Suit Against Me

Let me lay down the background in full so that you are able to fully appreciate why we have effectively lost trust in Natco's counsel. Of course, this is my view based on a close narration by my counsels of what transpired in court that day (also verified by other lawyers who were present in court that day).

As you know, Natco sued me on 13.08.2012, alleging that I had defamed them through articles written on SpicyIP, a blog that I founded almost a decade ago. I maintained then and I still maintain that their claim is a baseless one, given that my statements (that they lied to a court of law) are more than amply supported by their pleadings where they admit to the fact that an earlier statement of theirs to the court (that they had no intention to market a generic version of Dasatinib) was incorrect. Put another way and perhaps more bluntly, they lied to a court of law in order to avoid a quia-timet injunction against them. The relevant blog articles (that they took issue with) clearly set out all of this in great detail. And the details of the articles are below:

Patent "Perception": A Contemptuous Natco? (July 31, 2012) available at:

<<http://spicyip.com/2012/07/patent-perception-contemptuous-natco.html>>

Breaking News: Natco Admits to Bad Faith and BMS attempts Patent Linkage! (August 02, 2012) available at:

<<http://spicyip.com/2012/08/breaking-news-natco-admits-to-bad-faith.html>>

My response to their high-handed defamation suit has also been uploaded on our website, SpicyIP. Here is the link:

<<http://spicyip.com/natco-pharma-ltd-v-shamnad-basheer>>

Given that our website has the avowed objective of promoting greater transparency in the IP ecosystem, the least I could do was to upload pleadings in a case that I was personally involved in and one that is certain to have huge ramifications for free speech and defamation.

Given that the documents on record more than amply make out Natco's deplorable falsehood, my conclusion is a well founded one and does nothing more than call a spade a spade. And it was this plain speaking of the truth that triggered the offensive law-suit by Natco.

I must say that I have always admired Natco for their courage in taking on the litigious might of multinational giants. I was particularly impressed with their compulsory licensing move to foster greater access to affordable medications, and noted in the very same set of blog posts (that they took issue with), as below:

... The tables began turning early this year, when another Indian generic company, Natco filed India's first post TRIPS compulsory licensing application seeking to slash the patented prices of Bayers' patented anti cancer drug, Nexavar. In the wake of the compulsory licensing decision, Natco catapulted to prominence as our national hero; a bold pharmaceutical company that refused to cave in to international pressure or to bed foreign partners, but insisted on pioneering the delivery of cheaper and more affordable drugs through a new "compulsory licensing" route...

Despite such a wonderful track record, what really disturbed me was that they chose to cut corners and lied to a court of law in order to avoid an injunction. They needn't have, and could have still contested this lawsuit without compromising their ethics. Unfortunately, they chose not to and are now livid that I exposed their despicable conduct.

Their lawsuit qualifies as a SLAPP suit (Strategic Lawsuit against Public Participation) of the worst order, aimed at preventing me from writing further on this topic, and designed to force me into meek submission.

Despite their best efforts, Natco has been unable to secure an injunction against me, till date. However, they succeeded on other counts, given that the mainstream media simply refused to write anymore on this case. To this extent, the SLAPP effect has already kicked in. And this precisely is what worries many of us in the academic community and civil society. This matter therefore goes far beyond my individual interest in defending a baseless lawsuit, but calls into question a fundamental free speech value that many of us are committed to. Any potential settlement from my end will therefore have to keep this larger community in mind.

Settlement Talks

As you may know, I filed motions (Order VII Rule 10 & 11, CPC) to dismiss Natco's suit on the ground that their law-suit did not make out a credible cause of action and that they ought to have sued in another court. During one of the hearings, the judge recommended that we try and settle this matter. Natco then came up with the ridiculous offer that I apologise to them and pay money into a charity of their choosing. I naturally rejected this outright.

We then informed the judge that we could not agree on settlement terms. At the next date of hearing, the judge requested you to intervene. You then called Gopal Sankaranarayanan (my counsel in the Novartis patent case, where I had intervened in the Hon'ble Supreme Court and had the privilege of arguing along with you and several other esteemed counsels) and spoke to him of the judges' request. Gopal passed on the message to me and I called you.

I expressly mentioned to you that I was keen on a judicial ruling in this case, given that I am part of a larger community of academics and activists committed to battling the corporate stifling of free speech through SLAPP suits and preserving our constitutional right to the freedom of expression. However, I also noted that I was still willing to consider a reasonable settlement offer. You then stated that you would speak to Natco and revert.

A day prior to the matter coming up in court, Gopal called me mentioning that you had spoken to him and communicated Natco's potential settlement offer. I was given to understand that Natco would now no longer insist on an apology or the payment of any money by me. But I had to write a public letter mentioning that the impugned blog posts (that constituted the subject matter of their defamation law suit) were never written in bad faith and that I did not intend to cast aspersions on Natco.

I informed Gopal that I wanted to hear more on the proposed language of this public notice and consult with the wider group of academics and civil society advocates before committing to any settlement on these lines.

I believe Gopal relayed all of this to you and I expect that this was, in turn, communicated by you to Natco's counsels, Rajeshwari Hariharan and Gaurav Bharati.

Further, my counsel, Rajasekhar Rao and Natco's counsel, Gaurav Bharati had spoken a few minutes before our matter was called. Both of them agreed to seek a short adjournment to revert to the court with a settlement draft. Also, Mr Bharati requested us to de-tag this defamation law suit from the BMS patent suit against Natco, and we agreed to this request in good faith. The clear understanding therefore was that we were still engaged in settlement talks, which had not concluded, one way or the other.

Volte Face by Natco Counsel

Given this background, you will appreciate our sense of utter shock, when Ms Hariharan did not so much as make a mention of the status of our settlement talks, but began pushing for an injunction, asking the court to restrain me from writing further on this case.

My counsel, Rajasekhar Rao immediately objected this volte face, noting that we were still engaged in settlement talks and that he expected Ms Hariharan to appraise the court of the same, rather than pushing for an injunction, as she did. As you will appreciate, this is highly unethical conduct, completely unbecoming of a lawyer and an officer of the court.

Needless to add, all this has led to a significant trust deficit and I am not sure how to proceed, if Ms Hariharan continues to remain involved as Natco's counsel. I look forward to your suggestions on how we can bridge the trust deficit and move on to a potential settlement acceptable to both parties.

In the hope that some explanation would be offered for the despicable conduct of Ms Hariharan, or at the very least, an apology, I remain:

Most sincerely yours,

Shamnad

ps: May I also request you to please directly communicate with me henceforth at my co-ordinates in the signature line below. Thank you.

Dr. Shamnad Basheer
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2 December 2014 at 22:28

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