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

+ CS(COMM) 463/2020

I.A. 9671/2020 (under Order XXXIX Rule 1 and 2 CPC)

I.A. 9672/2020 (under Order XI Rule 1 (4) Commercial Courts Act)

I.A. 9673/2020 (under Section 151 CPC Act)

I.A. 9674/2020 (exemption from notarized affidavit)

MERCK SHARP AND DOHME CORP & ANR. Plaintiff

Represented by: Mr. Pravin Anand, Ms. Tusha
Malhotra, Ms. Pankhuri Malik,
Advocates.

versus

SMS PHARMACEUTICALS LIMITED

.... Defendant

Represented by:

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

21.10.2020

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The hearing has been conducted through Video Conferencing.

I.A. 9673/2020 (under Section 151 CPC Act)

1. Exemption allowed subject to just exceptions.
2. Original documents if any be filed within two weeks of the resumption of the normal Court functioning.
3. Application is disposed of.

I.A. 9674/2020 (exemption from notarized affidavit)

1. By this application the plaintiff seeks exemption from filing notarized affidavits in support of the plaint, statement of truth, application and affidavit under Section 65-B of the Indian Evidence Act.

2. Notarized affidavits be filed within three weeks.
3. Application is disposed of.

I.A. 9672/2020 (under Order XI Rule 1 (4) Commercial Courts Act)

1. Additional documents if any be filed within 30 days.
2. Application is disposed of.

CS(COMM) 463/2020 &

I.A. 9671/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. Plaintiff be registered as suit.
2. Issue summons in the suit and notice in the application to the defendants on the plaintiff taking steps through email/SMS/Whatsapp/Speed Post/Courier returnable before this Court on 15th February, 2021.
3. Case of the plaintiff is that the plaintiff is the proprietor of the suit patent No. 209816 (in short IN '816) granted on 6th September, 2007 with priority date as 6th July, 2001. IN '816 of the plaintiff relates to its pharmaceutical composition Sitagliptin for which a certificate of validity has already been granted by this Court in CS(OS) 586/2013. There has been neither any pre-grant nor post-grant opposition in respect of the plaintiff's suit patent Sitagliptin. The validity of the plaintiff's suit patent expires in July 2022.
4. Grievance of the plaintiff in the present suit is to the manufacturing and selling by the defendant of the pharmaceutical composition with the international non-propriety name Sitagliptin, for which the plaintiff has a valid and subsisting patent. Learned counsel for the plaintiff has taken this Court through the home page of the defendant's website wherein in the drugs available defendant claims that Sitagliptin is also available, despite the fact that the defendant on its website claims a disclaimer that there may be a

patent in favour of third parties in respect of some of the drugs. Further, the plaintiff's investigator conducted an inquiry as to the availability of the compound Sitagliptin to which a reply was received from the defendant affirming availability of Sitagliptin Phosphate for a sum of ₹1 lakh for 1 Kg. Even on the third party website like India Mart, defendant is advertising the sale of drug Sitagliptin.

5. Considering the fact that plaintiff has a valid and subsisting patent being IN '816 for which a certificate of validity has already been granted by this Court, as also the other averments in the plaint and the documents filed therewith, this Court finds that plaintiff has made out a prima facie case in his favour and in case no ex-parte ad-interim injunction is granted the plaintiff will suffer irreparable loss. The balance of convenience also lies in favour of the plaintiff and against the defendant.

6. Consequently, an ex-parte ad-interim injunction is granted in favour of the plaintiff and against the defendant in terms of prayer (i) of Para 6 of IA 9671/2020.

7. Compliance under Order XXXIX Rule 3 CPC be done within one week.

8. List the suit and application on 15th February, 2021.

9. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

OCTOBER 21, 2020
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