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

+ LPA No.695/2012

CIPLA LTD.

..... Appellant

Through: Mr. Rajiv Nayyar, Sr. Advocate and Mr. Maninder Singh, Sr. Advocate along with Ms. Prathiba M. Singh, Ms. Surbhi Mehta, Ms. Bitika Sharma and Mr. Varun Tirmani, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. T.R. Andhyarujina, Sr. Advocate, Mr. Sudhir Chandra, Sr. Advocate and Mr. N.K. Kaul, Sr. Advocate along with Mr. Pravin Anand, Ms. Archana Shanker and Mr. Aditya Gupta, Advocates.
Mr. Sumeet Pushkarna, CGSC along with Mr. Varun Dubey, Advocate for the UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

12.10.2012

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Cavt. Pet. No.1058/2012

Since the respondents have entered their appearance, the caveat stands discharged.

CM Nos.17769/2012, 17770/2012, 17771/2012, 17772/2012, (Exemption)

Allowed, subject to just exceptions.

CMs stand disposed of.

LPA No.695/2012 & CM No.17768/2012 (for Stay)

1. The appeal is at the instance of Cipla Ltd. challenging the order passed in CM No.17055/2012 (in W.P.(C) No.6361/2012) filed by the second and third respondents herein, i.e., Sugen Inc. and Pharmacia & Upjohn Company, ordering that the appellant herein shall not take any steps towards marketing its drugs till the next adjourned date, i.e., 15.10.2012. The second respondent in the appeal suffered an order at the hands of Assistant Controller of Patents and Designs of revocation of its patent. That order was questioned by the second and third respondents by filing the writ petition aforesaid, mainly on the ground that without furnishing the copies of recommendation of the Opposition Board, the same was relied upon by the Assistant Controller of Patents and Designs; even a request under Right to Information Act, 2005 for furnishing the copy of the said recommendation was denied; that refusal to furnishing the copy would be contrary to the provisions of Section 25 (3) and (4) of the Patents Act. Along with writ petition, an application for grant of stay was filed and the learned Single Judge vide order dated 05.10.2012 had ordered notice of the writ petition as well as application for stay, returnable on 15.10.2012. No interim stay of the order of Assistant Controller was granted.
2. The second respondent came across a news report of 05.10.2012 as to an attempt made by the appellant herein to market the products in question. Hence, another application for stay was filed on 06.10.2012.
3. The learned Single Judge, having noticed the above, vide the order under appeal has directed the appellant herein not to take any steps for marketing its drugs.
4. This order is questioned on the ground that on the application for stay

along with writ petition, the learned Single Judge had not granted any interim order and only directed notice, when second application for stay with similar prayer was filed, the learned Single Judge entertained and granted the above order. Further, in the absence of any prayer for direction to the appellant herein not to take any steps for marketing its drugs, the learned Single Judge should not have granted such an order.

5. The appeal is opposed on the ground that the order of the Assistant Controller of Patents and Design is *ab initio void* in view of non-application of provisions of Section 25 (3) and (4) of the Patents Act. Further, the subsequent application was necessitated in view of the newspaper report of a date after the filing of first application. That apart, the interim order is only upto 15.10.2012 and on which date the learned Single Judge would be considering the contentious issues.

6. We have considered the above submissions. On perusal of the order under appeal, it is seen that though the learned Single Judge has on 05.10.2012 only ordered notice in first stay application filed by the second and third respondents returnable by 15.10.2012, but having noticed that in the absence of stay, the appellant was intending to market the product before 15.10.2012, has on 08.10.2012, restrained the appellant from marketing the product, only till 15.10.2012. This being a discretionary order considering the *prima facie* case, we are not inclined to interfere, particularly, when the learned Single Judge is seized of the stay applications that would be heard on 15.10.2012, which is the next working day after today. The points, whether the order of the Assistant Controller is bad in view of Section 25 (3) and (4) of the Patents Act and whether the writ is not maintainable in the face of availability of alternate remedy of appeal are

still to be considered by the learned Single Judge on the next date of hearing and for that reason, we are not inclined to go into that aspect.

7. For the disposal of this appeal, it is suffice for us to mention that the interim order is one of interim arrangement till the next working day after today and was passed on considering the *prima facie* case, particularly the subsequent event that had taken place after notice of the stay application had been issued.

8. Hence, we do not find any merit to entertain this appeal. This appeal is accordingly dismissed.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

OCTOBER 12, 2012
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