IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 115 OF 2014

MIV Therapeutics (India) Pvt.Ltd. …Plaintiff
vs.
MIV Therapeutics Inc. & Ors. ...Defendants

Mr.Venkatesh Dhond, Senior Advocate with Mr.Prateek Bagaria with Mr.Alipak Banerjee i/b. M/s.Nishith Desai Associates for Plaintiff.
None for Defendants.

CORAM : S.C. GUPTE, J.

RESERVED ON : 15 JULY 2014

PRONOUNCED ON : 12 JANUARY 2015

ORDER :

The Plaintiff has filed the present suit, which claims *inter alia* a permanent anti-suit injunction against Defendant Nos.3 to 7.

2 The Plaintiff was originally a wholly owned subsidiary of Defendant No.1. Defendant No.2 was the Chairman of the Board of Directors of Defendant No.1. Defendant No.3 was the Co-founder and Chairman of the Board of Defendant No.1, until a particular date. Defendant No.4 is a Corporation, whose sole shareholder and Director is Defendant No.3. Defendant No.5 is a company, through which Defendant No.3 entered into a Finder's Fee Agreement dated 24 March 2011 for assisting Defendant No.3 company in acquisition of shares of the Plaintiff. Defendant No.6 is the President of Defendant No.5 company and son of Defendant No.3. Defendant Nos.4 and 5, who are affiliates of Defendant No.3, collectively constitute the 'Alan Lindsay Group'.

3 It is the case of the Plaintiff that on April 6, 2011, unknown to the Plaintiff, a US Law Firm Rissman Hendriks & Oliverio LLP (who are now arraigned as Defendant No.7 to the present Suit), initiated proceedings before the

US District Court, Massachusetts against Defendant No.1 - Company for unpaid professional fees. Defendant Nos. 2 and 3 were Defendants to that action. The Plaintiff, being a subsidiary of Defendant No.1 – Company, was arraigned as a party to the proceedings. On 13 April 2011, a preliminary injunction was obtained by the US Law Firm, Defendant No.7 herein, against Defendant Nos. 1, 2 and 3 as well as the Plaintiff restraining them from transferring any property unless a sum of USD 480,000 (which was claimed as unpaid professional fees due to Defendant No.7) was kept in escrow. During the pendency of the proceedings, Defendant No.2 informed the Plaintiff and one Purple Medical Solutions Private Ltd. ("Purple"), who was then interested in purchasing the shares of Defendant No.1 in the Plaintiff Company, that the claim of the US Firm would be settled. Purple, therefore, held back a sum of USD 600,000 (which included the claim for USD 480,000) from out of the sale consideration payable to Defendant No.1. In August 2012, Defendant No.2 informed the Plaintiff and Purple that the US action had been settled by him for all parties concerned, including the Plaintiff, for USD 200,000. On that assurance, Purple was persuaded to release USD 200,000 (out of the sum of USD 600,000 held back) to facilitate the settlement. It subsequently transpired that the sum of USD 200,000 was used by Defendant No.2 to settle the claim in the US action only against him. It is the case of the Plaintiff that the Plaintiff and Purple were kept in dark about this unilateral settlement and believed that the matter was closed as far as all the parties thereto were concerned. It is further the case of the Plaintiff that the debt owed to the US Law Firm had since been assigned in favour of Defendant No.4. It is in this backdrop of facts that the present Suit was filed originally against Defendant Nos. 1 to 6. The Plaintiff obtained an order of temporary injunction restraining Defendant Nos.3 to 6 from commencing, continuing and/or initiating any legal action before any court in any jurisdiction pertaining to claims made against the Plaintiff, its shareholder Purple and its officers and directors. Defendant No.7 herein thereafter filed a complaint being Civil Action No.14-0669A before the Superior Court, Suffolk SS, Commonwealth of Massachusetts, *inter alia* against the Plaintiff on the grounds of abuse of process and resulting damages and infliction of emotional distress. A claim for damages in excess of US $ 100,000 was set up against the Plaintiff towards its alleged joint and several liability. After receipt of the copy of the summons together with the plaint and Motion, the Plaintiff joined Defendant No.7 as a party Defendant to the present suit by amending the plaint. The Plaintiff also sought temporary and permanent injunction against Defendant No.7 restraining them from continuing with the complaint or initiating any other proceedings before any other court of law arising out of or in connection with the cause of action on which the complaint was filed or the reliefs were sought in the complaint. This Court granted the temporary injunction sought to the Plaintiff.

4 The present suit together with the writ of summons has been duly served on all the Defendants and an affidavit in proof of such service has been duly filed by the Plaintiff. The Defendants are absent despite service. There is no written statement filed by the Defendants contesting the present suit. The orders passed by this Court granting interim injunctions in terms of the permanent injunction sought in the suit have also been duly served on the Defendants. Despite service, Defendants have throughout remained absent during the proceedings of the suit. The suit was accordingly set down for exparte decree.

5 The Plaintiff has filed various documents in support of the Plaintiff's case along with plaint. The Plaintiff has also tendered oral evidence of its witness, Brian Lancelot, Director and authorized representative of the Plaintiff. The Plaintiff's witness has deposed to the truth of the various statements and averments contained in the plaint and also proved the documents produced therewith. The Plaintiff's statements and averments as also the testimony of its witness have not been challenged by the Defendants.

6 It is submitted by learned Counsel that Defendant Nos.2 and 3 were the persons who in concert had perpetrated the fraud in question. It is submitted that Defendant No.3 was responsible for the state of affairs that let to the US action in the first place. It is submitted that Defendant No.3 had then concealed these facts from the Plaintiff and Purple and thereby compounded the fraud, and was now seeking to enforce the default judgment. It is submitted that permitting such a course of action would be to permit premium being placed of dishonesty. It is the case of the Plaintiff, as submitted by the learned Counsel appearing for the

Plaintiff, that action on the part of the Defendants, as threatened, as also the complaint filed before the Superior Court, Suffolk SS, Commonwealth of Massachusetts, referred to above, are totally oppressive, vexatious and an abuse of process of law. It is submitted by the learned Counsel that apart from various incorrect statements concerning the Plaintiff and its association with the other Defendants, including describing Defendant No.2 as an alter ego of the Plaintiff, the complaint is nothing but a fresh round of litigation in a foreign Court, which the Lindsay Group (Defendant Nos.3 to 6) was injuncted from doing by an order passed by this Court on 9 January 2014 and confirmed on 28 January 2014.

7 Having regard to the uncontroverted averments in the plaint supported by documents which have been duly proved by the Plaintiff's witness as also the oral deposition of the Plaintiff's witness concerning the Plaintiff's grievance, the Plaintiff has made out a case for grant of the anti-suit injunction as claimed.

8 Accordingly, there shall be a decree in terms of prayer Clauses (a), (b) and (bi) of the plaint. As far as prayer Clause (c), which seeks a decree of damages against Defendant Nos.1 to 3, is concerned, there is no evidence placed on record by the Plaintiff. The prayer for damages is accordingly rejected.

9 There shall be no order as to costs.

(S.C. Gupte, J.)