

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and Registrar's orders.	Notes, of Court's orders or	Office Coram, orders or	Court's or Judge's orders.
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APPEAL FROM ORDER NO.43 OF 2015

SHIVSHANKAR BABURAO BIRADAR
VERSUS
VIJAY HARIDAS BANDE AND OTHERS

Advocate for the Appellant Mr. R. P. Adgaonkar.
Advocate for Respondent Nos.1 to 3: Mr. Ajinkya Reddy.

CORAM: T. V. NALAWADE, J.
DATED: 11th JANUARY, 2016.

PER COURT:

1. The appeal is filed against the order made on Exhibit-35 of R.C.S. No.1 of 2013 which is pending in District Court, Latur. The application filed for relief of injunction by present Appellant to prevent the respondent from using the combination of some medicines in breach of Registration of Patents Right is rejected by the trial Court. Both the sides are heard.

2. It is the case of Appellant, plaintiff that he is a medical practitioner and he has been practicing since year 2006 in medicine. It is his case that he has invented a pharmaceutical

injection for treatment of jaundice and anaemia and he has registered this invention under the provisions of Patents Act, 1970. It is his case that the defendant No.1 is also a medical practitioner and he is using the combination of drugs which is registered by the plaintiff under aforesaid Act and so there is infringement of the patented right. Plaintiff has mentioned the drugs which are 9 in number with the extent, quantity which according to him, he is using for aforesaid ailment, disease. According to him, he learnt from another doctor that defendants are using the same combination and so the cause of action took place for filing the suit. In application filed for temporary injunction, he prayed for relief of injunction to prevent the defendants from using the said combination.

3. The defendants filed written statement and contested the matter. Defendant No.1 contended that he is practicing in medicine since many years and he is running his independent clinic. According to him, he is practicing in allopathy and Ayurvedic medicines. He has denied that he has been using the combination of the medicine, drugs as alleged by the plaintiff. He has denied that the plaintiff has invented such combination and it is a new drug and he has acquired right to use the combination under Patent Act.

4. It is the case of defendants that the plaintiff is in the habit of making complaints against doctors and in the past also he

had made many complaints and representations against the defendants and others. It is contended that the competent authority had made inquiries into the allegations and had found that there was no substance in the allegations made by plaintiff. It is contended that such reports are collected by defendants from District Health Officer, Zilla Parishad, Latur under the Right to Information Act. They denied that there is a cause of action for the suit.

5. The suit is filed under section 168 of Patents Act for infringement and main relief is the relief of injunction. The submissions made show that after the date of the suit the defendants filed application before competent authority for revocation of the registration given to plaintiff under the aforesaid Act. It is their case that the plaintiff has not invented anything and the drugs mentioned in the plaint were already in the market and anybody can use combination of those drugs. The said proceeding is still pending.

6. The trial Court has refused the relief by holding that there is nothing with the plaintiff to show that there is cause of action for the suit. In the plaint, it is contended that the plaintiff learnt about the use of such medicine by defendants from his friend, who is doctor but even affidavit of that doctor is not filed. Plaintiff has contended that he made inquiry in the market and he received such information but in that regard also there is

nothing on the record. Admittedly, plaintiff is not manufacturing any drug under any name having the combination mentioned in the plaint. The submissions made show that inquiry was made by District Health Officer on complaint made by the plaintiff but the District Health Officer did not find any substance in the allegations made by the plaintiff. Admittedly, the 9 drugs mentioned in the plaint are already in the market separately, and also in combination and it is not the case of plaintiff that he has made inventions of those drugs. When District Health Officer visited the premises of defendants they did not find any of the medicines of the combination in the hospital. They found some injections of tuberculosis, they found Folic acid tablets and livomin syrup. They have opined that out of jealousy plaintiff has taken such action. Some other medicines like Vitcofol injection and asparin tablets were found but they are available in the market and they are being manufactured by different companies. The report of District Health Officer reveals that these drugs are being used for all patients and not only for the patients of jaundice by the medical practitioners.

7. The provision of Section 64 of aforesaid Act shows that revocation of the patent is possible. The provisions of section 107 of the Act show that when a suit is filed for infringement of a patent every ground on which the patent made can be revoked under section 64 is available as a ground of defence.

In view of these provisions and as there is no record to show that there is cause of action for filing suit the trial Court has refused the injunction. This Court sees no reason to interfere in the order made by the trial Court.

8. In the result, the appeal stands dismissed.

(T. V. NALAWADE, J.)

Dt.11/01/2016.
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