

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT (L) NO. 230 OF 2016
WITH
NOTICE OF MOTION (L) NO. 871 OF 2016**

Emcure Pharmaceuticals Limited	...Plaintiff
<i>Versus</i>	
Taj Pharmaceuticals Limited & 4 Others	...Defendants

Dr. Birendra Saraf, *a/w Ms. Pooja Kshirsagar, Ms. Monisha Mane Bhangale and Harsh B. Shah, i/b M/s. ALMT Legal, for the Plaintiff.*

Mr. D. D. Madon, *Senior Advocate, with Mr. Akshay Ruges, Ms. Rebecca Dias, i/b J. S. Chandnani, for the Defendants.*

CORAM: G.S. PATEL, J
DATED: 21st April 2016

PC:-

1. While considerable material has been filed in Notice of Motion, it is agreed between the parties that the Suit itself can be disposed of on certain basis with the Defendants submitting to a final injunction decree in terms of the following. The order that I propose to pass is one that broadly follows prayer clauses (a), (b) and (c) of the Plaint with certain clarifications and modifications as discussed in Court today.

2. It is agreed that the Plaintiff will not, in view of this, press its prayer for damages. Accordingly, the Suit is decreed against the Defendants in the following terms:

3. There will be an order permanent and mandatory injunction restraining the Defendants through any of their distributors, agents, dealers, nominees, associate or affiliate concerns or group entities and any person claiming by, through or under them from:

- (a) in any manner whatsoever from infringing the Plaintiffs' registered trademark 'BICNU' under registration No. 1204041 or the trade mark 'Consium' under registration No. 1018416.
- (b) in any manner or by any act or by the use of any mark, label or representatipm attempting to pass off any products or preparations as those of the Plaintiffs' under the registered mark 'BICNU' (registration No. 1204041) or 'Consium' (registration No. 1018416).
- (c) in any manner either manufacturing, selling or in any other manner dealing with any goods in such a way as to indicate or imply that these goods are manufactured by the Plaintiffs. To clarify: this means that the Defendants (which includes all the entities listed above) are not to affix any mark or indication on any of the goods with which they deal so as to suggest that those goods emanate from the Plaintiffs.

4. The Suit is disposed of in these terms with no order as to costs. Refund of Court Fee in accordance with the Rules.

5. There has been in the past great deal of controversy between the Plaintiffs and Defendants. I cannot within the frame of a Civil Suit address the Plaintiffs' grievances, if any, against the Defendants or their business or equally, the Defendants' case as placed in the Affidavit in Reply to the Plaintiffs' Notice of Motion. All contentions in this behalf are at least kept open for appropriate proceedings by both parties, if so advised. It is clarified that whatever the grievances the Plaintiffs and Defendants may have against each other, these will not extend to a claim by the Plaintiffs for damages on the cause of action pleaded in this Suit. Both parties had liberty to pursue any other remedies that they may have against each other, including as to exports, manufacturing, production or dealership. The disposal of this Suit on these terms leaves all those rights and contentions unaffected, including for the transactions mentioned in the Suit.

6. The Court Receiver is to stand discharged but without passing accounts of his costs, charges and expenses.

7. Mr. Farooque H. Shaikh, Master (Administration) had personally attended for service of the Writ of Summons. The Plaintiffs will pay his costs quantified at Rs.10,000/-.

8. It goes without saying that the Defendants' statement recorded on 30th March 2016 will obviously not continue beyond today's order.

9. The suit is decreed in these terms. Drawn up decree dispensed with. All concerned to act on an authenticated copy of this order.

10. In view of this, the Plaintiffs' Notice of Motion does not survive and is disposed of accordingly.

(G. S. PATEL, J.)