

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE N. AUTHINATHAN

O.S.A. No. 187 of 2013

&

M.P. No. 1 of 2013

1. Eris Life Sciences Pvt. Ltd.,
AF-10, Kanchan Pharma House,
National Highway No.8,
Aslali, Ahmedabad - 382427.
2. Windlas Biotech Ltd.,
40/1, Mohabewala Industrial Area,
SBI Road, Dehradun - 248 110. ..Appellants

Vs.

1. Unimed Technologies Ltd.,
Part A, Dadha Nagar,
Near Kowl Bazar,
Pozhichalur, Pallavaram,
Chennai - 600 074.
2. Sun Pharmaceuticals India Ltd.,
CD Plot No.3, Door No.8,
Old Tower Block Street,
Nandhanam Extension,
Chennai - 600 035. ..Respondents

Prayer: Original Side Appeal as against the fair and decretal order dated 28.01.2013 passed in O.A. No. 343 of 2012 in C.S. No. 288 of 2012 on the file of Original Side of the High Court of Madras.

For Appellants :: Mr.SP. Chockalingam

For Respondents :: Mr.Arun C. Mohan for
Ms. Brinda Mohan

J U D G M E N T

(Judgment of the Court was delivered by S. NAGAMUTHU,J.)

The respondents herein filed O.A. No. 343 of 2012 in C.S. No. 288 of 2012 praying for temporary injunction restraining the appellants herein, their manufacturers, marketers, distributors, stockists, promoters, servants, agents, retailers, legal representatives, job-workers or any other person claiming under them, from, in any manner, manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations, infringing the 1st respondent's registered trademark "ZEMPRED" by use of deceptively similar trademark "ZENPRIDE" or any mark deceptively similar to 1st respondent's registered trademark "ZEMPRED", in any other manner, whatsoever, pending disposal of the suit.

2. Learned Single Judge of this Court, by order dated 28.01.2013, has allowed the Original Application in O.A. No. 343 of 2012 and granted an order of ad-interim injunction, as prayed for, pending the suit. Challenging the same, the appellants have come up, before this Court, with this appeal.

3. We have heard the learned counsel for the appellants and the learned counsel for the respondents and also perused the materials on record carefully.

4. Though several grounds have been raised in this appeal, the main ground pointed out, is that, according to the appellants, the learned Single Judge was factually incorrect in his observation in paragraph No.4 of the impugned order that in spite of opportunity, no counter was filed by the appellants/respondents therein and that there was also no representation on behalf of the appellants, when the case was called for hearing.

5. Learned counsel for the appellants would submit that as a matter of fact, counter affidavit had already been filed and the matter was also argued at length on behalf of the appellants/respondents therein. However, the learned Single Judge, without considering the counter affidavit and the arguments advanced by the learned counsel for the appellants/respondents therein, has granted interim injunction, by considering the arguments advanced by the learned counsel for the respondents herein alone.

6. When we wanted to know from the learned counsel for the respondents as to whether the appellants had filed counter and whether the learned counsel for the appellants had argued before the learned Single Judge, learned counsel for the respondents

fairly conceded that counter affidavit, had, in fact, been filed by the appellants and arguments had also been advanced, at length, by the learned counsel for the appellants.

7. From the above fair submission made by the learned counsel for the respondents, we are satisfied that the learned Single Judge, with respect, was not right in considering the case of the respondents alone, while granting the order of ad-interim injunction, on the factual error that there was no counter affidavit filed by the appellants and there were no arguments advanced on behalf of the appellants. In view of the same, the order impugned is liable to be set aside and the matter has to be remanded back for fresh consideration.

8. In the result, this appeal is allowed and impugned order dated 28.01.2013 passed in O.A. No. 343 of 2012 in C.S.No. 288 of 2012 is set aside. O.A. NO. 343 of 2012 is remanded back, to the Single Judge concerned, before whom the suit is pending, for fresh consideration and disposal, in accordance with law, after hearing both the parties. It is further directed that since the respondents enjoyed the order of interim injunction, even before the impugned order came to be passed by the learned Single Judge, the said ex parte order of ad-interim injunction shall continue. No costs. Connected M.P. is closed.

sd/
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nv

To,
The sub Assistant Registrar,
Original side, High court ,
Chennai-104.

+1cc to Mr.S.P.Chockalingam, Advocate, Sr.74491/16

O.S.A. No. 187 of 2013

CA(CO)
GN(25/01/2017)