

\$~23&24.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 2920/1995, IA No.12694/1995 (u/O 39 R-1&2 CPC), CC No.300/1996, IA No.3011/1996 (u/S 151 CPC), IA No.8285/1996 (u/O 6 R-17) & IA No.5981/1997 (u/S 151 CPC).

NATIONAL RESEARCH AND DEV. CORP. OF INDIA ... Plaintiff

Through: Mr. D.V. Singh, Legal Consultant.

Versus

EASTERN MEDIKIT LTD.

..... Defendant

Through:

AND

CS(OS) 1565/1996 & CC No.19/1996

NATIONAL RESEARCH AND DEV. CORP.

OF INDIA

..... Plaintiff

Through: Mr. D.V. Singh, Legal Consultant.

Versus

EASTERN MEDIKIT LTD.

..... Defendant

Through:

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

20.10.2016

1. The order dated 20th September, 2011 in CS(OS) No.2920/1995 shows that though the said suit as originally filed was for infringement of patent but the patent expired in the year 1998 and now the claim remaining in the suit is only for damages; accordingly issues confined to the claim for damages were framed.

2. Though the defendant had also made Counter Claim No.300/1996 in CS(OS) No.2920/1995 but no issues are found to have been framed with respect thereto.

3. A perusal of the order dated 27th February, 2012 in CS(OS) No.1565/1996 shows the same to be for infringement of another patent and

issues having been framed with respect thereto.

4. A Counter Claim No.19/1996 is found to have been made in CS(OS) No.1565/1996 also and issue qua which i.e. to the challenge to the patent subject matter thereof was also framed.

5. Mr. D.V. Singh, Legal Consultant of the plaintiff appearing in person, on enquiry states that the term of the patent subject matter of CS(OS) No.1565/1996 has also since expired.

6. The proceedings in both the suits are however held up owing to the defendant company having been ordered to be liquidated by the Company Court of this Court and application of the plaintiff for permission to prosecute the suit pending before the Company Court.

7. Mr. D.V. Singh today seeks adjournment on the ground that the application before the Company Court is still pending.

8. The Official Liquidator of the defendant company has not bothered to pursue the claim.

9. The proceeding in both the suits were in fact vide order dated 15th July, 2014 adjourned *sine die* with liberty to the plaintiff to apply.

10. Upon neither party applying for revival of the suits, the Registry of its own re-listed the suits on 4th November, 2015 and 27th August, 2015 respectively and since then they are again being adjourned.

11. I have enquired from Mr. D.V. Singh as to what are the assets and liabilities of the defendant company in liquidation and whether there is any real possibility of the plaintiff, even if succeeding in the suits, recovering any amount.

12. Mr. D.V. Singh states that he had not made enquiries in this respect.

13. It is not deemed appropriate to keep the suits pending in this fashion.

14. I may note that the valuation of both the suits for the purposes of court fees and jurisdiction is less than the enhanced minimum pecuniary jurisdiction of this court and since the claim in the suits is only for damages, the second proviso to Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 may not also apply.

15. Be that as it may, it is deemed appropriate to dispose of both the suits and the Counter Claims but with liberty to the plaintiff to, if granted permission in the application stated to have been filed before the Company Court, apply for revival of the suits.

16. This order will also not come in the way of the Company Court, if so deems appropriate, calling the suits for trial before it.

17. It is ordered accordingly.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 20, 2016

‘pp’ ..