

\$~30

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 1218/2006 and I.A. No. 6695/2006

PFIZER PRODUCTS, INC.

..... Plaintiff

Through: Ms. Shilpa gupta, Advocate

versus

LIFELINE MEDICOS & ORS

..... Defendant

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

%

25.01.2016

Learned counsel for the plaintiff states that defendant No. 5 was proceeded ex parte vide order dated 28.01.2015. She further submits that defendant No. 5 has already filed its written statement wherein defendant No. 5 has conceded that it shall not manufacture the product with the infringing trademark 'VIGORA'. In preliminary submission No. VI, defendant No. 5 has disclosed that it was manufacturing the product under trademark VIGORA for defendant Nos. 2 and 4. In preliminary submission No. VIII, defendant No. 5 has stated that without going into the merit of the case, defendant No. 5 is not interested at all in the said product, and to show its bonafides, it has already surrendered the brand approval to the Drug Controller of Jammu and has no intention to continue with the said product

in dispute. In reply to para 10 under heading 'Paragraphwise Reply', defendant No. 5 has stated that it is merely a licensee of the defendant No. 2 and has no intention of continuing etc. the said pharmaceutical preparations. Counsel submits that they have entered into a settlement with defendant Nos. 2 to 4 as contained in I.A. No. 25373/2015 under Order 23 Rule 3 CPC which was allowed by the Court vide order dated 14.12.2015. Under the said settlement, the said defendants have changed the colour of their product from Green to Magenta and have also undertaken to change their mark to VIGORE in respect of its product Sildenafil Citrate. The said defendants also undertook to cease w.e.f. 01.01.2016 further manufacturing of its product under the mark VIGORA.

Learned counsel submits that since defendant No. 5 was only manufacturing for defendant No. 2, under license from defendant No. 2, and defendant No. 2 has agreed and undertaken to cease manufacturing of the product under the trademark VIGORA w.e.f. 01.01.2016; defendant No. 5 has also stated that it has already ceased to manufacture the product in question, this Court may decree the suit qua defendant No. 5 on the basis of the admission.

I find merit in the submission of the counsel for the plaintiff. The aforesaid aspect pointed out from the written statement of defendant No. 5 clearly constitutes admission by the defendant No. 5 that defendant No. 5 was not claiming any right in the trademark VIGORA; was only manufacturing on the strength of license from defendant No. 2; and, defendant No. 5 has also conveyed its intention not to manufacture the product under the trademark VIGORA. Moreover, since the defendant No.2 has undertaken not to manufacture the product in question under the

trademark VIGORA w.e.f. 01.01.2016, defendant No. 5 can also possibly not manufacture the said product under the said trademark after the said date. Accordingly, the suit is decreed in terms of prayer 19A(i) as prayed for in the plaint against defendant No.5.

VIPIN SANGHI, J.

JANUARY 25, 2016
sl