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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 1287/2013, IAs 20479/2014 & 1195/2016

BOEHRINGER INGELHEIM PHARMA GMBH & CO KG

..... Plaintiff

Through: Ms.Vaishali Mittal, Adv. with
Ms.D.Neha Reddy, Mr.Siddhant
Chamola, Adv.

versus

PREMCHAND GODHA AND ANR

..... Defendant

Through: Ms.Babita, Adv. with Mr.Piyush
Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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05.02.2016

IA 1195/2016

This is a joint application filed u/O XXIII Rule 3 r/w Section 151 of the Code of Civil Procedure with the following prayers:-

“a) Record the present terms of compromise as being lawful;

b) Decree the present suit in terms of the aforesaid terms.

c) Grant the Plaintiff a refund of the court fees in terms of section 16 of the Court Fees Act, 1870 read with Section 89 of the CPC, 1908.

And pass any further orders that it may deem fit in the facts and Circumstances of the present proceedings.”

The application is signed by the parties and their counsel. The application is duly supported by the affidavits of the attorney of plaintiff, defendant No. 1 and the Company Secretary of defendant No. 2.

I note, the parties were referred to the mediation by the learned Joint Registrar vide order dated October 17, 2014.

It is averred in the application that the parties have entered into a settlement agreement.

I note, the learned Mediator Mr. Gajendra Giri of the Delhi High Court Medication & Conciliation Centre has also filed a copy of the settlement agreement dated September 21, 2015 with annexures A & B (running into 9 pages). The settlement agreement has been entered on the following terms, vide clause 5:-

(a) That the Defendants, their proprietors, and principal officers undertake to cease and desist any use of the trademark MUCOSOLVIN and/or any other word or mark identical with and/or deceptively similar to the Plaintiffs trade mark MUCOSOLVAN in relation to medicinal and pharmaceutical preparations. The Defendants, their proprietors, and principal officers undertake to withdraw registration, if any, of any device or term alone or in combination with any other word with MUCOSOLVIN. However, the Defendants, and their proprietors, and principal officers are permitted to use and/or register the trademark MSOLVIN/ M-SOLVIN in relation to medicinal and pharmaceutical preparations.

b) The parties mutually undertake not to object to and/or oppose the registration of plaintiffs trademark MUCOSOLVAN and defendants trade mark MSOLVIN/ M-SOLVIN. The Defendants further undertake not to file any rectification against the trade mark MUCOSOLVAN of the Plaintiff.

c) The Defendants hereby undertake to pay to the Plaintiff a sum of INR Two Lakhs (Rs. 2,00,000/-) vide a demand draft to cover the litigation and other related costs as suffered by Plaintiff. The said demand draft will be handed over to Anand and Anand, the Plaintiff's legal counsel and authorized representatives before the Hon'ble High Court on the date of hearing. The demand draft shall be drawn in the name of "Anand and Anand" payable at New Delhi. The Plaintiffs legal counsel will remit the abovementioned amount to the Plaintiff, Boehringer Ingelheim Pharma GmbH & Co. KG, Germany under the laws and regulations after obtaining permission from the appropriate authorities. In that respect, the Defendants also have no objection to the entire amount as mentioned above being remitted to the Plaintiff in the equivalent of USD (currency of the United States of America) by its legal counsel, Anand and Anand, Advocates.

d) Subject to the terms of the settlement entered into between the parties, the Plaintiff has agreed to forego their claim for damages and delivery up, as claimed in prayer paragraph 28 (iii) to 28 (iv) of the Plaint. However, the Plaintiff reserves its rights to initiate the requisite legal proceedings against the Defendants in case the Defendants are found to be in breach of any of the aforesaid terms and conditions.

e) The undertakings are furnished by the parties and shall be binding on all the subsidiaries, affiliates, legal heirs, representatives, directors, officers, servants, agents and assigns in business of the parties for all time to come.

f) That the parties to this application have read, understood and agreed upon the terms and conditions of the Compromise and the same have been entered into by them voluntarily.

g) That the present Compromise Application has been signed and executed by the respective authorized representatives of the Plaintiff and the Defendants and the terms of the present Compromise Application shall be binding henceforth on all the parties to the settlement, their legal heirs, representatives and assignees in business, interest and titles.

h) In view of the undertakings hereinabove, the parties acknowledge that this settlement agreement comprises full and final disposal of the entire subject matter of the suit qua the Defendants and of all causes of action deemed to have arisen up to the date of the compromise decree, with validity limited to the territory of India.”

The settlement agreement dated September 21, 2015 has been signed by the parties, their counsel and the learned Mediator. It is stated by the learned counsel for the parties that the settlement has been entered by the parties voluntarily and the parties shall be bound by the same. The statement is taken on record. Learned counsel for the defendants has, in terms of clause 5(c) of the agreement, handed over a demand draft for a sum of Rs.2 Lacs drawn in the name of "Anand and Anand" bearing no. 019732 dated 23.12.2015, drawn on ICICI Bank, Bhikaji Cama Place, Delhi to the learned counsel for the plaintiff. Learned counsel for the plaintiff shall remit the amount in the equivalent of USD (currency of the United States of America)

as tendered today by learned counsel for the defendants to the learned counsel for the plaintiff, in terms of the provisions of laws, rules and regulations after obtaining permission from the appropriate authorities. The settlement agreement dated September 21, 2015 is taken on record. Decree sheet be drawn in terms of clause 5 of the settlement agreement dated September 21, 2015 entered into between the parties as noted above.

Insofar as refund of the Court Fees is concerned, as noted, the parties have entered into a settlement agreement dated September 21, 2015, through the process of mediation and only, issues were framed. The plaintiff shall be entitled to the refund of Court Fees under Section 16 of the Court Fees Act, 1870.

The learned counsel for the plaintiff makes an oral prayer, as the certificate for refund is issued in the name of the plaintiff, who is based in Germany, a direction be given for the issuance of the certificate in favour of Anand and Anand, the plaintiff's counsel, instead of the plaintiff so that the counsel, can remit the amount in the equivalent of USD (currency of the United States of America) to the plaintiff, based in Germany in terms of rules and regulations in vogue and after obtaining permission from the appropriate authorities. Noting the submission, the Registry is directed to

issue the certificate for refund of the Court Fees, in the name of Anand and Anand, plaintiff's counsel. The counsel, on the refund of the Court Fees, shall remit the amount in USD (currency of United States of America) as per the provisions of laws, rules and regulations in vogue after taking permission from the appropriate authorities.

Suit and applications are disposed of.

No costs.

V. KAMESWAR RAO, J

FEBRUARY 05, 2016/ak