

\$~9

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

+ CS(OS) 3326/2012

M/S DR MOREPEN LTD Plaintiff
Through: Mr. Varun Arora, Adv.

versus

PRO LABORATORIES PVT LTD & ANR Defendants
Through: Mr. Neeraj Grover and Mr. Aditya
Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **09.05.2016**

I.A. 5777/2016

This a joint application filed by the plaintiff and the defendant under Order XXIII Rule 3 read with Section 151 of the Code of Civil Procedure, 1908.

The application is signed by the authorized signatory on behalf of the plaintiff and the Director and Manager of defendant nos. 1 and 2. The application is accompanied by the affidavit of the authorized representative of the plaintiff, the Director of defendant no. 1 and the Manager of defendant no.2.

It is averred in the application that the parties have settled their

disputes on the following terms:-

“I. The Defendants hereby acknowledge the Plaintiffs trademark rights in the mark LEMOLATE.

II. The Defendant hereby acknowledge that the marks LEMOLATE and LOMULATE are deceptively similar and the use of the latter by the defendants may cause confusion and deception in the markets

III. The Defendants undertake to refrain from using the mark LOMULATE or any other deceptively similar variant thereof, in respect of medicinal product meant for treating cold and cough and in any manner whatsoever at any time in future.

IV. That the Defendants state that they are not in possession of any goods under the mark LOMULATE and do not intend to manufacture or market such goods at any time in future.

V. That without admitting any allegations in the suit, & with an intention to amicably settle, the dispute in hand, the Defendants have agreed to pay Rs. 25,000/- (Rs. Twenty Five Thousand Only) as costs and damages in the present suit to the Plaintiff.

VI. In consideration of the aforesaid undertakings, the Plaintiff agrees to forego its claims as recited in prayer clauses (iii), (iv), (v) and (vi) of the plaint.'

VII. The undertakings herein are given by Shri Subhash Rijhwani and Shri Chandra Prakesh Gupta in their capacity as Director of the Defendant No.1 and Manager of Defendant No. 2 respectively.”

Learned counsels for the parties state that the terms of settlement are lawful and they pray that the Suit be decreed in terms of clause (i) and (ii) of

the plaint.

Learned counsel for the defendant states that in terms of clause V above, an amount of Rs.25,000/- has been paid to the counsel for the plaintiff.

In view of the settlement entered between the parties, which being lawful, the Suit is decreed in terms of clause (i) and (ii) of the plaint.

Decree sheet be drawn accordingly.

The application and Suit stand disposed of.

I.A. 21245/2012

Dismissed being infructuous.

V. KAMESWAR RAO, J

MAY 09, 2016

js