

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 450 OF 2017
IN
SUIT (L) NO. 131 OF 2017
WITH
LEAVE PETITION NO. 73 OF 2017

JB Chemicals & Pharmaceuticals Ltd	...Plaintiffs
<i>Versus</i>	
Laborate Pharmaceuticals India Ltd	...Defendants

Mr Mahesh Mahadgut, a/w Ms Poonam T, i/b Mr Mahesh Mahadgut, for the Plaintiffs.
Ms Prachi Pandya, i/b Corporate Attorney, for the Defendants.

CORAM: G.S. PATEL, J
DATED: 8th March 2017

PC:-

1. I have an Affidavit from the Defendant. In paragraph 4, the Director, Mr Aditya Bhatia, claims that his company developed the rival product in 2013 under the bona fide belief that it was an original mark and being unaware of the Plaintiffs' prior mark. This is of course not a valid defence. In the affidavit, Mr Bhatia then says that on receiving a copy of the papers in this Suit and Notice of

Motion on 25th February 2017, the Defendant immediately ceased manufacturing of products under the impugned mark and label.

2. Paragraphs 7 to 9, however, relate to two batches of the impugned product. One batch of 100,000 units is said be in trans-shipment from 23rd February 2017 to Iraq with an invoice value of US\$ 25,000. Another consignment of 20th February 2017 is to Afghanistan. It is of 30,000 units with a invoice value of US\$ 15,000. Annexed to this Affidavit are invoices and packing lists. Mr Bhatia asks that these two shipments and only these two shipments be allowed through.

3. Mr Mahadgut has instructions to oppose this application most strenuously. He insists that I should see discrepancy between invoices and their dates and urges me to conclude that these are fabricated. Mr Bhatia volunteered this information. He was not asked to disclose it. If indeed these invoices were fabricated, Mr Bhatia could as well have fabricated ten not two, and claimed a transshipment value of much more than he has. His entire Affidavit would have been quite in order without paragraphs 6 to 9 if these invoices and orders were fraudulent or had there been no genuine shipments at all. Indeed given the approach of the Defendant from the beginning and Mr Bhatia's instructions to his Advocate from the first date of hearing, I see no reason to discredit his Affidavit. I find it completely candid and worthy of acceptance.

4. I will accept the Affidavit and the statements made in it and I will permit the two consignments mentioned in this Affidavit to

proceed. The Defendants' statement that they have ceased manufacture and use of the impugned labels and have no further consignments in transit is noted as an undertaking to the Court. The Affidavit will be filed in the Registry with continuous pagination.

5. This sufficiently disposes of the Notice of Motion. No costs. The suit will continue and the Plaintiffs will be at liberty to pursue their claim, including in damages, if so advised.

6. List the Suit for directions high on board on 4th April 2017.

(G. S. PATEL, J.)