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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 1935/2011 & CC No.92/2011 & IA No.15292/2017 (u/O XXIII R-3 CPC)

F HOFFMANN-LA ROCHE LTD & ANR Plaintiff

Through: Ms. Manisha Singh, Mr. Hrishikesh Roy, Ms. Vertika Sahay & Mr. Mahabir, Adv.

Versus

ACCURA CARE PHARMACEUTICALS

PVT LTD & ANR Defendants

Through: Mr. Praveen Singh, Adv. for D-2.

AND

CS(OS) 1936/2011 & CC No.91/2011 & IA No.14948/2017 (u/O XXIII R-3 CPC)

F HOFFMANN-LA ROCHE LTD & ANR Plaintiffs

Through: Ms. Manisha Singh, Mr. Hrishikesh Roy, Ms. Vertika Sahay & Mr. Mahabir, Adv.

Versus

INNOVA LIFE SCIENCES PVT LTD & ANR Defendants

Through: Mr. Praveen Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **19.12.2017**

1. The counsel for the two plaintiffs in both the suits and the counsel for the defendant no.2 BDR Pharmaceuticals International Pvt. Ltd. in CS(OS) No.1935/2011 and the counsel for both the defendants in CS(OS) No.1936/2011 state that the said parties have settled all the disputes and differences subject matter of the two suits and the counter-claims filed therein on the terms contained in IA No.15292/2017 and IA No.14948/2017, both under Order XXIII Rule 3 of the CPC filed in the respective suits, and

seek a decree in terms thereof.

2. On enquiry, it is stated that the defendant no.1 Accura Care Pharmaceuticals Pvt. Ltd. in CS(OS) No.1935/2011 is *ex parte* and the plaintiffs therein are pressing for *ex parte* decree against the said defendant no.1 as well.

3. The parties, in the respective applications, have stated that they have entered into a Compromise Agreement, terms whereof are confidential in nature. The counsels state that they do not desire the said terms of the compromise to come in public domain and have therefore not filed copies of the compromise arrived at along with the applications.

4. The counsels otherwise state that the suits be decreed against the compromising defendants in terms of the compromise applications with liberty to the plaintiffs to, if find the compromising defendants to be in breach of the Confidential Agreement, separately sue therefor instead of by way of execution of the said decree.

5. Subject to the aforesaid, the compromise as contained in the applications is found to be lawful and is allowed.

6. The counsels confirm that the applications are signed by the Authorized Representatives of the respective parties and are supported by their affidavits.

7. A decree is passed in favour of the plaintiffs in CS(OS) No.1935/2011 and against the defendant no.2 BDR Pharmaceuticals International Pvt. Ltd. therein, and in the Counterclaim No.92/2011, in terms of IA No.15292/2017 which shall form part of the decree sheet, leaving the parties to bear their own costs.

8. A decree is passed in favour of the plaintiffs in CS(OS) No.1936/2011 and against both the defendants therein viz. Innova Life Sciences Pvt. Ltd. and BDR Pharmaceuticals International Pvt. Ltd. and in the Counterclaim No.91/2011, in terms of IA No.14948/2017 which shall form part of the decree sheet, leaving the parties to bear their own costs.

9. The undertakings, contained in the compromise applications, of the respective defendants are also accepted and the said defendants are ordered to be bound thereby and cautioned through counsel of consequences of breach of undertaking given to the Court.

Decree sheets be drawn up.

10. With respect to the *ex parte* decree sought by the plaintiffs in CS(OS) No.1935/2011 against the defendant no.1 Accura Care Pharmaceuticals Pvt. Ltd. therein, the counsel for the plaintiffs on enquiry states i) that there is no *ex parte* restraint against the defendant no.1 and there is only a direction to the defendant no.1 to *inter alia* maintain separate accounts with respect to the product in question; ii) that the defendant no.1 had appeared in response to the summons and filed written statement as well as counterclaim and contested the suit till 2013 and thereafter stopped appearing and has been proceeded against *ex parte* on 4th February, 2015; iii) that the counterclaim filed by the defendant no.1 was not numbered as no court fees was filed thereon; and, iv) that the defendant no.1 filed accounts also only till June, 2012.

11. The plaintiffs have instituted CS(OS) No.1935/2011 for permanent injunction restraining infringement of Indian Patent No.196774 which has expired on 13th March, 2016. Thus, the relief claimed of injunction in the

suit has become infructuous and only the reliefs claimed of damages and costs survive.

12. I have considered the need for relegating the plaintiffs to *ex parte* evidence for the said limited purpose.

13. I have enquired from the counsel for the plaintiffs, the damages due to the plaintiffs on the basis of accounts filed by the defendant no.1 Accura Care Pharmaceuticals Pvt. Ltd. till June, 2012.

14. The counsel for the plaintiffs states that the damages so due would be in the sum of Rs.3,60,613/-. However on further enquiry, it is stated that the same would not indicate the profits earned by the said defendant.

15. In my opinion, the position would remain the same, even if the plaintiffs were to be relegated to *ex parte* evidence and no purpose will be served thereby.

16. In this view of the matter, the need to relegate the plaintiffs to *ex parte* evidence in CS(OS) No.1935/2011 is not felt.

17. The conduct of the defendant no.1 Accura Care Pharmaceuticals Pvt. Ltd. of having stopped contesting the suit after having initially contesting the same shows that the defendant no.1 has no defence to offer. Considering the said aspect, it is deemed appropriate to award lumpsum damages in the sum of Rs.2 lacs besides the costs of the suit to the plaintiffs against the defendant no.1 Accura Care Pharmaceuticals Pvt. Ltd.

18. Accordingly, an *ex parte* decree is passed in favour of the plaintiffs viz. F. Hoffmann-La Roche Ltd. and OSI Pharmaceuticals, LLC and against the defendant no.1 Accura Care Pharmaceuticals Pvt. Ltd. in CS(OS) No.1935/2011 for recovery of damages in the sum of Rs.2 lacs and for costs

of the suit.

The counsels fee assessed at Rs.3.5 lacs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

DECEMBER 19, 2017

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