

\$~7.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 637/2018**
SUN PHARMA LABORATORIES LTD. Plaintiff
Through: Mr. Sachin Gupta and Mr. Pratyush
Rao, Advs.
versus
MSN LABORATORIES P. LTD. & ANR. Defendants
Through: Mr. Saif Rahman Ansari and Mr.
Tahir A.J. Advs. for D-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

04.12.2018

1. The plaintiff instituted this suit to restrain the two defendants namely MSN Laboratories P. Ltd. and Intas Pharmaceuticals Limited from infringing the mark 'MIRTAZ' of the plaintiff registered in Class-5, by adopting the mark 'MIRATAS', also in relation to goods in Class-5 and from thereby passing off their goods as those of the plaintiff and for ancillary reliefs.
2. The suit came up first before this Court on 23rd February, 2018 and thereafter on 27th February, 2018 and on both of which dates the counsels for both the defendants appeared on advance notice. On 27th February, 2018, it was agreed between the plaintiff and the defendant no.2, who claimed to be the owner of the mark 'MIRATAS', that the defendant no.2 will change the pre-fix of their drug appearing before alphabets 'TAS' so that there remains no confusion or deceptive similarity between the trade mark of the plaintiff and the trade mark of the defendant no.2, and the hearing was adjourned binding the parties to the said agreement. On the next date of

hearing i.e. 15th March, 2018, this Court was informed that efforts were being made by the defendant no.2 to find an alternative name for its drug under the name 'MIRATAS'. However, when the defendants did not come up with alternative name till the next date of hearing i.e. 8th May, 2018, also, finding that the two marks were more or less identical and were being used for treatment of separate diseases and which could gravely endanger the health of the public, the defendants were restrained from using the mark 'MIRATAS' or any other mark deceptively similar to the mark 'MIRTAZ' of the plaintiff.

3. Neither of the two defendants have filed written statement within the prescribed time or sought extension of time for filing written statement. The plaintiff filed IA No.7522/2018 under Order XIII A of the Code of Civil Procedure, 1908 (CPC) as applicable to commercial suits, for summary judgment and notice of which application was issued to the defendants on 28th May, 2018. No reply to the said application also has been filed.

4. Today, the counsel for the defendant no.1 states that the defendant no.1 was merely manufacturing the medicine under the mark 'MIRATAS' under contract with the defendant no.2 and else does not claim any independent right in the mark 'MIRATAS' and does not want to contest the suit subject to the plaintiff not claiming any ancillary reliefs against the said defendant.

5. None appears for the defendant no.2.

6. The defendant no.2 is proceeded against *ex parte*.

7. The plaintiff, on the basis of pleadings and the documents filed, has made out a case for grant of relief of permanent injunction as claimed and

the need to relegate the plaintiff to *ex parte* evidence against the defendant no.2 Intas Pharmaceuticals Limited for grant of the said relief is not felt.

8. The counsel for the plaintiff states that subject to a decree for permanent injunction being granted today itself, the plaintiff shall not press for ancillary reliefs.

9. A decree is accordingly passed, in favour of the plaintiff and against both the defendants, of permanent injunction in terms of prayer paragraph 28 (a) & (b) of the plaint dated 22nd February, 2018, leaving the parties to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

DECEMBER 04, 2018

‘pp’ ..