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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 76/2018, CAV No.360/2018 & CM Nos.16415-17/2018**

NATCO PHARMA LTD

..... Appellant

Through: Mr. C.M. Lall, Ms. Rajeshwari, H. &
Ms. Nancy Roy, Advocates

versus

ASTRAZENECA AB & ANR

..... Respondents

Through: Mr. Sudhanshu Batra, Senior
Advocate with Mr. Pravin Anand, Mr.
Nischal Anand & Mr. Sandith
Shivakumar, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **25.04.2018**

Having heard learned counsel for the parties, we are not inclined to interfere with the impugned order dated 23.4.2018 passed by the learned Single Judge.

In fact, it appears that the impugned order would not be appealable in terms of Section 10 of the Delhi High Court Act, 1966 read with Section 13(1) of the Commercial Courts, Commercial Division and Commercial Appellate Division, High Court Act, 2015, as it is merely an order of adjournment, fixing the case for further arguments on 9.5.2018.

Learned counsel for the appellant submits that the appellant had entered appearance on the first date of hearing, when CS(OS) No.792/2018 was listed, i.e., 11.4.2018 and time was taken to make submissions and complete the pleadings. The case was accordingly taken up on 12.4.2018, and on the said date, the matter was adjourned

to 17.4.2018 for arguments. The appellant had filed written statement along with counter-claims on 16.4.2018. On 17.4.2018, the suit and the application for interim injunction were directed to be listed on 23.4.2018, when the impugned order was passed.

The impugned order refers to the accepted factual position that appellant had launched the drug ‘ticagrelor’ on 20.4.2018, i.e., after filing the suit and when the question and issue of interim injunction was pending. In these circumstances, learned Single Judge, in our opinion, rightly felt it appropriate and proper to injunct the present appellant till the next date of hearing, i.e., 9.5.2018. While passing the said injunction order, the learned Single Judge has recorded that an injunction order has been passed in favour of the respondent in CS(Comm.) No.749/2018 titled “Astrazeneca AB & Ors. v. P. Kumar & Anr.”, which is also fixed for hearing on 9.5.2018.

Learned counsel for the appellant states that as there was no stay or injunction, the appellant was justified in launching the drug. He relies on the judgment of the Supreme Court in Novartis AG v. Union of India & Ors., in Civil Appeal No.2706-16/2013. He submits that, on 17.4.2018, the appellant had informed the learned Single Judge that the appellant was in the process of launching the product. Appellant submits that a Single Judge should have recorded his opinion on the three ingredients, namely, *prima facie* case, balance of convenience and irreparable harm and injury before injunction was granted.

On being questioned, learned counsel for the appellant states that in the written statement, the appellant had not stated or averred

that the appellant had launched the drug in question or specifically indicated the date of launch.

We would not comment on the merits, as the matter is listed for arguments and consideration before the learned Single Judge on 9.5.2018. The learned Single Judge, in our opinion, thought it appropriate and proper to direct that the parties maintain *status quo* till the interim application is taken up on 9.5.2018. The appellant, notwithstanding that the suit and application were listed and were taken up for hearing on 11.4.2018, 12.4.2018 and 17.4.2018, had thought it appropriate to launch the drug midway during the hearings. Short dates were fixed and given to hear the parties and adjudicate the *lis*. In the aforesaid circumstances, the conduct, in our opinion, justifies the direction given by the learned Single Judge to maintain *status quo* by not launching the product till the issue is examined and considered and appropriate orders were passed.

In the facts and circumstances of the case, when arguments on the application for injunction were being heard, it would not have been appropriate for the Single Judge to specially express view/opinion on different aspects, including the three ingredients. The intent of the Single Judge was to ensure that the parties do not change their existing position, when the hearing had commenced. In another suit, CS(Comm.) No.749/2018, Astrazeneca AB & Ors. v. P. Kumar & Anr. *ex parte* interim injunction order was passed by the same Judge after being satisfied.

The appeal has no merit and the same is dismissed. All the pending applications are also dismissed. We clarify we have not expressed any opinion on merits.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

APRIL 25, 2018

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