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

+ **CS(OS) 1725/2007**

MOREPEN LABORATORIES LTD. Plaintiff

Through: Mr. Naman Joshi, Mr. Dheeraj P. Deo
and Mr. Arjit Benjamin, Advs.

Versus

MAYUKA LABS PVT. LTD. & ORS. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **26.11.2018**

1. The plaintiff has sued for permanent and mandatory injunction restraining the defendants no.1 to 6 viz. (i) Mayuka Labs Pvt. Ltd., (ii) Dr. N.K. Chandrasekhar, (iii) Dr. Tapan Kashyap, (iv) Meera Narayan Aralikatte (Director), (v) Suguna Nakka Krishnamurthy (Director) and (vi) Krishnamurthy Nakka (Director), from (a) using in any manner the intellectual property and proprietary information / data / knowledge of the plaintiff, including but not limited to the list of clients and list of suppliers / vendors, towards manufacture, development and / or marketing of any product including the API-Montelukast, similar to that of the plaintiff; (b) for contacting any of the clients or vendors or purchasers of the plaintiff; and, (c) for mandatory injunction directing the defendants to return the intellectual property of the plaintiff as well as a Honda City Car, Sony Viao Laptop Computer, Mobile Phones and Laptop Computer etc.

2. The suit came up first before this Court on 18th September, 2007 when, while issuing summons of the suit and notice of the application for interim relief, the defendants were restrained from using any information of which the plaintiffs were proprietors including client lists, strategies, API-

Montelukast Sodium and from contacting the clients, vendors and suppliers of the plaintiff. Commission was also issued for seizure of the aforesaid devices of the plaintiff in possession of the defendants and for removing from the laptop of the defendants the proprietary information of the plaintiff.

3. Upon the defendants appearing before this Court, the earlier *ex parte* ad-interim order was modified, to only restrain the defendants from using any of the processes employed by the plaintiff in respect of its proprietary process for its products including API-Montelukast Sodium and from using any client list / strategy of which the plaintiff was the proprietor.

4. The order dated 27th November, 2009 records the contention of the counsel for the plaintiff that the entire suit of the plaintiff rested on the assertion of the plaintiff that the process adopted by the defendants was similar to that of the plaintiff and the suit could be disposed of by sending the processes of both the plaintiff and the defendants to an expert. On the said contention, with the consent of the parties, the processes of both the plaintiff and the defendants were sent to an Advocate / Court Commissioner to report, whether the two were similar. However, the said Court Commissioner on 24th February, 2010 stated that the commission was technical in nature and could not be performed by an advocate. On the suggestion of the counsel for the plaintiff, Mr. Essense Obhan of M/s Obhan & Associates was appointed as Commissioner in terms of the earlier order dated 27th November, 2009.

5. Vide order dated 25th February, 2011, the parties were referred to Mediation Cell of this Court, which remained unsuccessful.

6. Vide order dated 21st November, 2011, the following issues were framed in the suit:

- “1. Whether the defendants are unlawfully utilizing the proprietary information of the plaintiff comprising of list of clients / vendors / suppliers towards manufacture, development and marketing of product API Montelukast? OPP
2. Whether the defendants are unlawfully utilizing the patented process employed by the plaintiff in manufacturing API Montelukast? OPP
3. Whether the defendants are liable to return all intellectual property and proprietary information of the plaintiff in original along with all copies thereof irrespective of the storage medium and destroy the same if not possible to return? OPP
4. Relief.”

and the parties relegated to evidence.

7. The plaintiff did not lead evidence despite several opportunities and on 6th April, 2015, it was informed that the parties were attempting amicable settlement. Thereafter several dates were taken for reporting settlement till 5th May, 2017 when the counsel for the plaintiff stated that there were no chances of settlement. The plaintiff again started taking dates for adjournment. On 23rd February, 2018, the counsel who had been appearing for defendants no.1, 2 and 4 to 6 stated that he was not receiving instructions from the defendants and vide order dated 6th July, 2018, on an application of the counsel for the defendants 1,2 and 4 to 6, the counsel was discharged from appearance. Since none else appeared for the defendants, the defendants were proceeded against *ex parte* and the plaintiff relegated to *ex parte* evidence.

8. The plaintiff, in its *ex parte* evidence has tendered affidavits by way of examination-in-chief of two witnesses i.e. Manoj Kumar Sharma, Manager (Administration) and Dr. Madanpal Tanwar, General Manager, Research & Development and closed its evidence. None appeared on behalf of defendants to cross examine the witnesses of the plaintiff and none has appeared for any of the defendants today. The counsel for the plaintiff has

been heard.

9. The plaintiff is engaged *inter alia* in manufacture and marketing of pharmaceutical and medicinal products. The defendants no.2 and 3 were employed with the plaintiff. The plaintiff, in its plaint and in its *ex parte* evidence, claims that the defendants no.2 and 3 had access to all data / records including technical knowhow of the plaintiff. It is further the claim that the defendant no.2, under contract of employment with the plaintiff, had agreed to maintain secrecy / confidentiality qua the proprietary information of the plaintiff; one of the products manufactured by the plaintiff is the Active Pharmaceutical Ingredient 'Montelukast' for treatment of Asthma inflammation and allergic diseases and the plaintiff chose the said molecule for development and commenced work on it in 1999-2000 and the said development is covered by patent applications of the year 2006 of the plaintiff and the defendants, after the defendants no.2 and 3 left the employment of the plaintiff with the proprietary information of the plaintiff, have commenced manufacture of Montelukast in infringement of the process used by the plaintiff since the year 1999-2000.

10. However, neither of the two witnesses of the plaintiff have proved the patent if any of the plaintiff which was being infringed by the defendants. Rather, the suit itself was not premised as for infringement of patent and was merely for injuncting the defendants from using the process of the plaintiff for manufacture of active pharmaceutical ingredient Montelukast. However, without the plaintiff having a patent in the said process, the plaintiff cannot seek to injunct. Of the two witnesses examined by the plaintiff in its *ex parte* evidence, one is Manoj Kumar Sharma, Manager (Administration) and the question of his proving any proprietary right of the plaintiff in the

process did not arise. Though the plaintiff examined Dr. Madanpal Tanwar, General Manager, Research & Development, but he also in his affidavit by way of examination-in-chief did not prove any patent and so much so he did not prove any document whatsoever. The plaintiff has thus utterly failed to prove the case brought before this Court for injunction restraining the defendants from using the proprietary process of the plaintiff for manufacture of Active Pharmaceutical Ingredient Montelukast, and which was the main relief in this suit as per the plaintiff also in terms of the order dated 27th November, 2009. Though the plaintiff had claimed other reliefs also in the plaint, but the same do not survive and no evidence with respect thereto also has been led.

11. As far as the claim of the plaintiff of restraining the defendants from using the client list of the plaintiff and / or from contacting any of the vendors, suppliers or purchasers of the plaintiff is concerned, I have recently in *Navigators Logistics Ltd. Vs. Kashif Qureshi* 2018 SCC OnLine Del 11321 held against the entitlement to such relief and the need to reiterate the reasoning given therein is not felt.

12. The plaintiff thus, inspite of defendants being *ex parte* has failed to prove its case. It appears that the plaintiff consumed the time of this Court without any basis. Though the plaintiff is liable to be burdened with costs therefor but the defendants having abandoned the defence, I am refraining in imposing costs on the plaintiff.

13. The suit is dismissed.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

NOVEMBER 26, 2018/‘gsr’..

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