

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

% Date of decision: October 12, 2018

+ FAO(OS) 105/2018

VHB LIFE SCIENCES INC Appellant

Through: Mr. Amarjit Singh, Mr. Ravikesh
Sinha and Ms. Shubhi Sharma, Advs.

versus

MERCK SHARP & DOHME CORP Respondent

Through: Mr. Pravin Anand, Ms. Vaishali Mittal
and Ms. Mrinali Menon, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. This appeal has been filed by the appellant challenging the order of the learned Single Judge dated 7th May, 2018 in Suit No. CS(OS) 641/2008, whereby the learned Single Judge has closed the opportunity of the appellant herein to cross-examine PW-1 K.G. Ananthakrishnan.

2. Mr. Pravin Anand, learned counsel for the respondent had, on the last date of hearing, taken an objection with regard to the maintainability of the appeal on the ground that the impugned order is not an appealable order under Order 43 Rule 1 CPC. He had relied upon the judgment of the Coordinate Bench of this Court in the case of *HPL India Ltd. And Ors. v.*

QRG Enterprises and Anr. 238 (2017) DLT 123 (DB). Today he has also relied upon three judgments of this Court in ***Bull Machines Pvt. Ltd. V. JC. Bamford Excavators Ltd. and Anr. FAO (OS) 37/2018*** decided on 14th March, 2018; ***Oberoï Realty Ltd. and Ors. v. EIH Ltd. and Ors. FAO(OS)(COMM) 215/2018*** decided on 24th September, 2018 and; ***Micromax Informatics Ltd. v. Vijay Jain and Ors. FAO(OS) 310/2017*** decided on 13th December, 2017.

3. On this submission of Mr. Pravin Anand, Mr. Amarjit Singh, learned counsel appearing for the appellant submits that judgment of this court in ***HPL India Ltd. and Ors. (supra)*** is under challenge before the Supreme Court and is still pending consideration. He has drawn our attention to two orders passed by the Supreme Court on 16th February, 2017 and 15th March, 2018. According to him, in the earlier order dated 16th February, 2017, the Supreme Court had directed that the disputed documents, which were the subject matter of the appeal to be taken on record subject to the result of the case. Mr. Amarjit Singh states that the appellant be permitted to cross-examine Mr. K.G. Ananthakrishnan subject to the outcome of the appeal pending before this Court.

4. We are not impressed by the submission made by Mr. Singh for the simple reason that there is no stay on the order of ***HPL India Ltd. and Ors.***

(*Supra*). Further, Mr. Anand is justified in relying upon other judgments of the Coordinate Bench of this Court taking similar view.

5. In view of the above an order on the application under Order 15(A) read with Section 151 CPC is not an appealable order under Order 43 Rule 1 CPC and also in view of the Judgment of the Coordinate Bench of this Court in *HPL India Ltd. and Ors. (supra)*, the appeal is not maintainable. The same is dismissed.

CM No. 25841/2018 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

OCTOBER 12, 2018/jg