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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 1198/2016, IA No.10723/2016 (u/O XXXIX R-1&2
CPC) & IA No.271/2018 (u/O XXIII R-3 CPC)
MERCK SHARP & DOHME CORP & ANR Petitioners

Through: Ms. Udit Patro, Adv.

Versus

REGALIA PHARMACEUTICAL
(INDIA) PVT LTD & ANR Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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11.01.2018

1. The two plaintiffs viz. Merck Sharp & Dohme Corp. and Sun Pharmaceutical Industries Ltd. instituted this suit against the two defendants viz. Regalia Pharmaceutical (India) Pvt. Ltd. and Mr. Rohit Karpe for permanent injunction restraining infringement of patent No.209816 or any of the claims thereof including 'Sitagliptin' or any of its pharmaceutically acceptable salts including under the brand 'SITANEXT' and for ancillary reliefs.

2. The suit was entertained and vide *ex parte* order dated 1st September, 2016, the defendants were restrained from launching their products 'SITANEXT' and from infringing the Indian Patent No.209816.

3. The Office Note under the order dated 24th January, 2017 is of both the defendants having been served on 14th October, 2016 and 9th October, 2016 respectively. However, none appeared for the defendants.

4. Vide order dated 24th January, 2017 right of the defendants to file written statement was closed. On 20th February, 2017 the counsel for the

plaintiffs stated that the defendants have approached the plaintiffs for amicable settlement. Vide subsequent order dated 25th July, 2017, the plaintiffs were relegated to leading their *ex parte* evidence.

5. IA No.271/2018 has been filed by the counsel for the plaintiffs but also purporting to be signed by the defendants and accompanied with the affidavit of the parties / their representatives.

6. The counsel for the plaintiffs states that though defendant no.2 who is also authorized on behalf of defendant no.1 was to appear today but she has received telephonic instructions from the defendant no.2 that he is unable to reach today in Court and requests for an adjournment.

7. There is no reason to disbelieve the counsel for the plaintiffs who also states that the application and the affidavit are signed as they purport to be.

8. The compromise arrived at between the parties is found to be lawful and IA No.271/2018 under Order XXIII Rule 3 CPC is allowed.

9. A decree is passed in favour of the plaintiffs and jointly and severally against the defendants in terms of prayer paragraph 86(a) of the plaint dated 30th August, 2016, leaving the parties to bear their own costs.

10. The undertakings of the defendants as contained in IA No.271/2018 under Order XXIII Rule 3 CPC are also accepted and the defendants are ordered to be bound therewith.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

JANUARY 11, 2018

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