

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 31ST DAY OF JULY 2019

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

A. No.5378 of 2019

in

C.S.No.461 of 2019

MAXIVISION EYE HOSPITALS PRIVATE LIMITED,
NO.15, 4TH STREET, ABHIRAMAPURAM,
CHENNAI-18, REPRESENTED
BY ITS AUTHORIZED SIGNATORYPlaintiff

-Versus-

1. BAUSCH AND LOMB INDIA PVT LTD,
(PREVIOUSLY KNOWN AS BAUSCH AND LOMB EYECARE INDIA PRIVATE
LIMITED)
NO.303, DLF SOUTH COURT,
A1, SAKET DISTRICT CENTER, SAKET, NEW DELHI-110 017,
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.

2. MR.SANJAY BHUTANI,
MANAGING DIRECTOR, BAUSCH AND LOMB INDIA PVT.LTD.
(PREVIOUSLY KNOWN AS BAUSCH AND LOMB EYECARE INDIA PRIVATE
LIMITED), NO.303, DLF SOUTH COURT, A-1, SAKET DISTRICT
CENTER, SAKET, NEW DELHI-110 017.

3. NIDISH MOGHE,
CHIEF FINANCIAL OFFICER,
BAUSCH AND LOMB INDIA PVT.LTD.
(PREVIOUSLY KNOWN AS BAUSCH AND LOMB EYECARE INDIA PRIVATE
LIMITED)
NO.303, DLF SOUTH COURT, A-I, SAKET DISTRICT CENTER,
SAKET, NEW DELHI-110 017

4. TECHNOLAS PERFECT VISION GMBH,
MESSERSCHMITTSTRASSE 1+3, D-80992 MUNCHEN, GERMANY,
REP.BY ITS PRESIDENT MR. KRISTIAN HOHLA

5. BAUSCH AND LOMB (SINGAPORE) PTE LTD.,
(PREVIOUSLY KNOWN AS TECHNOLAS SINGAPORE PTE LTD.)
3, HARBOURFRONT PLACE #09-04, HARBOURFRONT TOWER TWO,
SINGAPORE-099 254

6. BAUSCH AND LOMB INCORPORATED,
ONE BAUSCH AND LOMB PLACE, ROCHESTER,
NY 14609 UNITED STATES OF AMERICA.

7. TRIVITRON HEALTHCARE PVT.LTD.,
NO.15, 4TH STREET, ABHIRAMAPURAM, CHENNAI-18,
REP.BY ITS AUTHORIZED SIGNATORY. ..DEFENDANTS

A.NO.5379 OF 2019:

MAXIVISION EYE HOSPITALS PRIVATE LIMITED,
NO.15, 4TH STREET, ABHIRAMAPURAM,
CHENNAI-18, REPRESENTED
BY ITS AUTHORIZED SIGNATORY ...Applicant/Plaintiff

-Versus-

1. BAUSCH AND LOMB INDIA PVT LTD,
(PREVIOUSLY KNOWN AS BAUSCH AND LOMB EYECARE INDIA PRIVATE LIMITED)
NO.303, DLF SOUTH COURT,
A1, SAKET DISTRICT CENTER, SAKET, NEW DELHI-110 017,
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.

2. MR.SANJAY BHUTANI,
MANAGING DIRECTOR, BAUSCH AND LOMB INDIA PVT.LTD.
(PREVIOUSLY KNOWN AS BAUSCH AND LOMB EYECARE INDIA PRIVATE LIMITED), NO.303, DLF SOUTH COURT, A-1, SAKET DISTRICT CENTER, SAKET, NEW DELHI-110 017.

3. NIDISH MOGHE,
CHIEF FINANCIAL OFFICER,
BAUSCH AND LOMB INDIA PVT.LTD.
(PREVIOUSLY KNOWN AS BAUSCH AND LOMB EYECARE INDIA PRIVATE LIMITED)
NO.303, DLF SOUTH COURT, A-I, SAKET DISTRICT CENTER,
SAKET, NEW DELHI-110 017

4. TECHNOLAS PERFECT VISION GMBH,
MESSERSCHMITTSTRASSE 1+3, D-80992 MUNCHEN, GERMANY,
REP.BY ITS PRESIDENT MR. KRISTIAN HOHLA

5. BAUSCH AND LOMB (SINGAPORE) PTE LTD.,
(PREVIOUSLY KNOWN AS TECHNOLAS SINGAPORE PTE LTD.)
3, HARBOURFRONT PLACE #09-04, HARBOURFRONT TOWER TWO,
SINGAPORE-099 254

6. BAUSCH AND LOMB INCORPORATED,
ONE BAUSCH AND LOMB PLACE, ROCHESTER, NY 14609 UNITED STATES OF AMERICA.

7. TRIVITRON HEALTHCARE PVT.LTD.,
NO.15, 4TH STREET, ABHIRAMAPURAM, CHENNAI-18,
REP.BY ITS AUTHORIZED SIGNATORY. ..RESPONDENTS/DEFENDANTS

Application praying that this Hon'ble Court be To Direct the Respondents/Defendants Nos.1,5 and 6 to undertake inspection of (the machines) and to submit a report setting out the present condition as well as the cost of repairing and/or servicing the Femtosecond 520 Victus, Stellaris Phaco bearing serial Number SYS02644, Stellaris Phaco bearing serial Number SYS01240 in the possession of the Applicant pending disposal of the suit.

This application coming on this day before this court for hearing the court made the following order:-

This application has been filed to sue the respondents for further remedy under the same cause of action under Order II Rule 2 of Code of Civil Procedure, 1908.

2. Heard the learned Senior Counsel Mr.Sathish Parasaran appearing for the Applicant/Plaintiff. Perused the affidavit and petition.

3. It is stated that the first respondent/first defendant is the Private Limited Company having registered office at No.303,DLF South Court, A-1, Saket District Center, Saket, New Delhi-110 017. The defendants 2 and 3 are the Managing Director and Chief Financial Officer of the first defendant respectively. The fourth defendant is an ophthalmology laser company incorporated in Germany in the year 2009. In 2013, the fourth defendant was fully acquired by the sixth defendant, which is an entity

incorporated in the United States and is engaged in the business of developing, manufacturing and marketing eye care products and conducts operations in several jurisdictions, through its subsidiaries. The Defendants 1,4,5 and 6 are related corporate entities and affiliates which manufacture, use and sell eye-care products under the trademark "Bausch+Lomb" and the said defendants are therefore collectively referred to as **"Bauch and Lomb Group"**.

4. It is stated the seventh defendant is a company incorporated under the Companies Act, 1956 and is engaged in business of supplying medical equipment in India and the plaintiff have been given to understand that the seventh defendant is no longer the distributor of the Bausch and Lomb Group since 2015.

5. It is further stated that the present lis relates to the breach of the assurances/commitments/representations of the Bauch and Lomb Group that service/technical support, spare parts, accessories and consumables would be made available to the plaintiff, during the life of the Machines. It is further stated that the present suit arose at Abhiramapuram, when the first defendant failed to service the Stellaris Phaco machines which broke down on <https://hcservices.eco.org.in/hcservices/> and when the first defendant breached the obligations under the CMC(s). The cause of action further

arose when the first defendant failed to service victus before the machine completely broke down on 12.01.2017. The cause of action further arose when the first defendant failed to service the 520F pursuant to the urgent service call was placed by the Plaintiff vide email dated 12.01.2017, when the first defendant refused to provide service support for the Machines after the seventh defendant was terminated as the Indian distributor for the Bausch and Lomb Group, when the negotiations between the plaintiff and first defendnat for the replacement of the broken down machines failed in March 2017. The cause of action further arose on 04.10.2017 when a legal notice was sent to the Defendant Nos.1,2 and 6 by the Plaintiff and reply was received on 23.10.2017. The invoice for 520F and 217P machines confers exclusive jurisdiction on the courts in Chennai in case of any dispute arising out of the sale of such machines.

6. The Respondent Nos.1,4,5 and 6 are related corporate entities and affiliates which manufacture, use and sell eye care products under the trademark "**Bausch+Lomb**".

7. The learned Senior counsel for the applicant submits that the aforesaid machines were purchased from the seventh defendant which has a registered office in Chennai.

Further, the CMC(s) for the aforesaid machines were entered into by the Plaintiff with the seventh defendant in Chennai

and the settlement talks between the plaintiff and the first defendant was also held in Chennai and hence prays this Court to grant leave to the applicant to sue the respondents under Order II Rule 2 of the Code of Civil Procedure.

8. Considering the aforesaid facts and circumstances of the case and also considering the submissions made by the learned Senior Counsel for the petitioner/Plaintiff, this application is allowed and the leave as prayed for is granted.

Sd/.K.R.J.

31.07.2019

//Certified to be a true copy//
Dated this the day of 2019.
SU/14.08.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

WEB COPY