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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 132/2019 and C.M. No. 26786/2019,**

AJANTA PHARMA LTD Appellant
Through: Mr. C.M. Lall, Sr. Advocate with Mr. S.
Majumdar, Advocate

versus

SUN PHARMA LABORATORIES LTD Respondent
Through: Mr. Akhil Sibal, Sr. Advocate with
Mr. Kapil Wadhwa, Ms. Devyani Nath,
Mr. Deepika Pokharia and Ms. Shriya Misra,
Advocates.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE TALWANT SINGH

ORDER
% **29.05.2019**

Caveat No. 599/2019

1. Appearance is entered on behalf of respondent/caveator, who states that he has received a complete set of the paper book.
2. In view of the above, the caveat stands discharged.

C.M. No. 26787/2019 (Exemption)

Allowed, subject to all just exceptions.

FAO(OS) (COMM) 132/2019 and C.M. No. 26786/2019 (Stay)

1. The appellant is aggrieved by the order dated 10.5.2019, whereby an application filed by the respondent/plaintiff under Order XXXIX Rules 1 and 2 CPC has been allowed and appellant/defendant has been restrained

from selling any medicinal preparations, nutritional food supplements or any other preparations for human consumption for treating any illness, disorders or diseases under the trademark, 'GLOTAB' or any other mark identical to or deceptively similar to the respondent/plaintiff's mark 'GLOEYE'. A rider has been added to the aforesaid order by permitting the appellant/defendant, who has a manufacturing licence of the year 2013, to exhaust the stock of its product, subject to filing affidavits reflecting quarterly accounts of the same.

3. The main grievance of the appellant/defendant is that though the suit of the respondent/plaintiff was instituted in July, 2014, for the past almost five years, no interim orders have been granted in favour of the respondent/plaintiff who has been very casual in pursuing the suit. In all this duration, no progress whatsoever has been made. Mr. C.M. Lall, learned Senior Advocate submits that even issues have not been framed in the suit so far, we find that admission/denial of documents took place only in November, 2018 whereafter both sides have been busy focusing on the interim application instead of the suit.

4. Learned counsel for the appellant/defendant thus states that the non-seriousness of the respondent/plaintiff can be gauged from the manner in which the suit has made progress or rather has not made any progress at all.

5. Mr. Akhil Sibal, learned Senior counsel for the respondent/plaintiff concedes there has been some delay in making progress in the suit but states that the same cannot be attributed solely to the respondent/plaintiff. He seeks to explain that some attempts were made between the parties to settle their disputes through mediation that failed and the respondent/plaintiff had

also moved an application in the year 2014 praying *inter-alia* for amendment of the plaint which was ultimately rejected in the year 2018.

6. At this stage, we have enquired from learned counsel for the appellant/respondent as to the volume of its stock in respect of the medicinal preparation being sold under the trademark, 'GLOTAB'. For this purpose, the briefing counsel had sought a pass over to obtain necessary instructions from his client. Pass over was granted twice. On the third call, learned counsel states that he has received instructions to the effect that there is a stock of 78,556 strips of 10 tablets each available in the inventory of the appellant/defendant, worth Rs.1.5 crores approx.(Rs.196/- per strip). The average volume of monthly sale of the said product is ten thousand strips. There is enough stock available with the appellant that can last for eight months, if reckoned from 01.06.2019, which shall be good till end of January, 2020.

7. This being the position, we do not propose to interfere with the impugned order passed by the learned Single Judge at this stage. Instead, directions are issued that the proceedings in the suit be expedited so that it can be disposed of preferably by the end of January, 2020.

8. Both sides shall prepare the list of proposed issues and exchange copies with each other by 05.07.2019. The suit be listed before the learned Single Judge on 10.07.2019, for framing of issues. Immediately after issues are framed, Case Management hearing shall be conducted, as contemplated under Order XV A, CPC to ensure that the trial in the suit is completed in a time bound manner. It is made clear that neither side shall be

accommodated for an adjournment and they shall strictly adhere to the timelines fixed by the learned Single Judge.

9. At this stage, learned counsel for the appellant/defendant states that they may be permitted to file some relevant documents to substantiate the submissions made in an affidavit already placed on the record to demonstrate that the product in question stands converted from a pharmaceutical product to a nutraceutical product. As the other side has no objection to filing of the said documents, the said documents shall be filed on or before 05.07.2019, with a copy furnished to the other side.

10. In the above duration, the appellant/defendant shall not manufacture any fresh medicinal preparations under the trademark, 'GLOTAB'. Its right is restricted to selling only the available stock of 78556 strips of 10 tablets each, on the terms and conditions imposed in the impugned order.

11. The appeal is disposed of. A copy of this order shall be placed in the file of CS(OS) 266/2018. It is made clear that final adjudication in the suit shall take place uninfluenced by the observations made in the impugned order.

HIMA KOHLI, J

TALWANT SINGH, J

MAY 29, 2019/ap/mr