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

+ **FAO(OS) (COMM) 191/2019 & CM APPLs.36230-36232/2019**

ASTRAZENECA AB & ANR

.....Appellants

Through

Mr. Sudhir Chandra Agarwal and Mr. V.P. Singh, Sr. Advocates with Mr. Pravin Anand, Ms. Archana Shankar, Ms. Vaishali Mittal, Mr. Shrawan Chopra, Mr. Siddhant Chamola and Mr. Vaibhav Mittal, Mr. Bobby Jain and Ms. Ankita Sabharwal, Advocates.

versus

P KUMAR & ANR

.....Respondents

Through

Mr. J. Sai Deepak, Mr. G. Natraj, Mr. Avinash Kumar and Mr. R. Abhishek, Advocates

+ **FAO(OS) (COMM) 192/2019 & CM APPLs. 36233-36235/2019**

ASTRAZENECA AB & ANR

.....Appellants

Through

Mr. Sudhir Chandra Agarwal and Mr. V.P. Singh, Sr. Advocates with Mr. Pravin Anand, Ms. Archana Shankar, Ms. Vaishali Mittal, Mr. Shrawan Chopra, Mr. Siddhant Chamola and Mr. Vaibhav Mittal, Mr. Bobby Jain and Ms. Ankita Sabharwal, Advocates.

versus

T RAO & ANR

.....Respondents

Through

Mr. Sanjeev Sindhvani, Sr. Advocate Ms. Rajeeshwari H., Mr. Tahir A.J and Mr. Swapnil Gaur, Advocates

+ FAO(OS) (COMM) 194/2019 & CM APPLs. 36239-36241/2019
ASTRAZENECA AB & ANRAppellants

Through Mr. Sudhir Chandra Agarwal and Mr. V.P. Singh, Sr. Advocates with Mr. Pravin Anand, Ms. Archana Shankar, Ms. Vaishali Mittal, Mr. Shrawan Chopra, Mr. Siddhant Chamola and Mr. Vaibhav Mittal, Mr. Bobby Jain and Ms. Ankita Sabharwal, Advocates.

versus

DR REDDYS LABORATORIES LTDRespondent

Through Mr. Jayant Bhushan, Sr. Advocate with Mr. Ketan Paul, Mr. Tushar Bhushan, Ms. Sneha Jain, Ms. Savni Dutt, Mr. Devvrat Joshi and Mr. Amitavo Mitra, Advocates.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

6.09.2019

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1. The present appeals are directed against the common judgment dated 8.8.2019 passed by the learned Single Judge dismissing interim applications filed by the appellants/plaintiffs under Order XXXIX Rules 1 & 2 CPC i.e. I.A. 3986/2018 in CS (COMM) 749/2018, I.A. 4771/2018 in CS (COMM) 792/2018 and I.A. 9332/2018 in CS (COMM) 1023/2018. The said judgment has also disposed of an application filed by the respondents/defendants in CS (COMM) 749/2018, under Order XXXIX Rule 4 CPC, for seeking vacation of the ex-parte ad-interim injunction order dated 22.3.2019 granted in favour of the appellants/plaintiffs. We may note *FAO(OS) (COMM) 191/2019 and connected matters*

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that in all the three suits, the appellants/plaintiffs have prayed for amongst others, a decree for permanent injunction restraining the respondents/defendants from marketing, selling, distributing etc. any product that infringes the subject matter of the Indian Patents No. IN 209907 (in short 'IN 907'), IN 247984 (in short 'IN 984') and IN 272674 (in short 'IN 674').

2. In the impugned order, the learned Single Judge has held that the appellants/plaintiffs have failed to make out a prima facie case and observing that the balance of convenience is in favour of the respondents/defendants, the ex-parte ad interim orders passed in the respective suits in favour of the appellants/plaintiffs, have been vacated with a caveat that the respondents/defendants shall continue maintaining true and correct accounts relating to the sale of the impugned drug, "TICAGRELOR", which is sold or dealt with by them during the pendency of the suit proceedings. Further, the respondents/defendants have been directed to file quarterly accounts in the Court, duly supported by the affidavit of one their Directors, affirming the veracity of the said accounts. They have also been directed to file accounts statements of the sale figures of the captioned drug, duly authenticated by their Chartered Accountant, on the basis of the Income Tax returns filed by them.

3. Extensive arguments have been addressed by learned counsel for the parties in the present appeals over the past few dates. In the course of the said arguments, a suggestion was made by Mr. Anand, learned counsel for the appellants/plaintiffs for settling the matter relating to the interim injunction, pending disposal of the suits, which we had put across to the

other side and adjourned the appeals for them to gather some information at our directions. Today, the requested information has been furnished to us and the interim arrangement proposed by the counsel for the appellants/plaintiffs explored further. The matters were also passed over to enable counsel on both sides to obtain clear instructions from their respective clients. On the second call, learned counsel for the respondents/defendants state that the suggestion coming from the other side is acceptable to their clients. Accordingly, the present appeals are disposed of on the following agreed terms:-

- (i) Till 2.11.2019, the respondents/defendants agree that they shall not sell the product "TICAGRELOR" in the market.
- (ii) After 2.11.2019, there shall be no restraint on the respondents/defendants to sell the product "TICAGRELOR", subject to the condition that they shall continue maintaining true and correct accounts in respect of the sale of the said drug, as ordered in para 85 of the impugned judgment dated 8.8.2019.
- (ii) The appellants/plaintiffs agree that they shall not approach the Single Judge in the suits instituted by them for seeking injunction against the respondents/defendants in respects of 'IN 984' and 'IN 674'.

4. Having regard to the fact that the suits instituted by the appellants/plaintiffs against the respondents/defendants are commercial suits that are required to be decided expeditiously but have not made any progress as the entire focus of the parties has been on the interim applications, it is deemed appropriate to direct a Case Management hearing in the suits. The

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parties request that the suits may be directed to be listed on an actual date for the said purpose.

5. List the three suits referred to in para 1 above, before the learned Single Judge on 15.10.2019, for a Case Management hearing.

6. Before parting with the case, it is made clear that the parties shall be entitled to take all the pleas in the suit as may be available to them, both on facts and in law. The learned Single Judge shall be at liberty to consider the respective claims of the parties on conclusion of the trial, and take an independent view, uninfluenced by the views expressed in the impugned judgment, which at the end of the day, is only interim in nature.

7. The present appeals are disposed of on the above agreed terms alongwith the pending applications while leaving the parties to bear their own expenses.



HIMA KOHLI, J


ASHA MENON, J

SEPTEMBER 6, 2019
NA/rkb

- fresh cm 42696/19 - (for directions)
- " cm 42698/19 - (exemption)

disposed of on 8-9-19