

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.01.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S.No.282 of 2019
and A.No.3184 of 2019

- 1.Boehringer Ingelheim Pharma GmbH & Co.KG,
D-55216, Ingelheim am Rhein
Germany
Rep by its Power of Attorney Mr.Sujeet Kumar
- 2.Boehringer Ingelheim (India) Pvt.Ltd.,
1102, 11th Floor, Hallmark Business Plaza,
Guru Nanak Hospital,
Bandra (East), Mumbai
India, 400051
Rep by its Power of Attorney Mr.Sujeet Kumar .. Plaintiffs

/versus/

Tanmed Pharma India Private Limited,
Registered office at No.18,
Dr.Ambedkar Road,
Kodambakkam, Chennai 600 024
And also Factory at
No.1/429, Multi Industrial Nagar,
Gerugambakkam,
Chennai-600128. .. Defendant

This Civil Suit is filed under Order IV Rule 1 Original Side Rules read with Order VII Rule 1 of CPC and under Sections 104-106 of the Patents Act prayed for (a) The defendant, by themselves, their directors, licensees, stockiest and distributors and / or anyone claiming through any of them,

jointly and severally be restrained by a permanent order and injunction of this Hon'ble Court from infringing the patent rights of plaintiff No.1 under Indian Patent Nos.243301 and 227719 by launching, making, using, offering for sale, selling, importing and / or exporting the medicinal product, Linagliptin in any form whatsoever including Linagliptin formulation, "Linagliptin Tablet" and /or "Linagliptin + Metformin Hydrochloride Tablets" or any "generic version" thereof or any other product covered by the subject patents granted by the Controller of Patents on January 19, 2009 and October 5, 2010 in favour of Plaintiff No.1 subsists, or otherwise;

(b) The defendant be, jointly and severally, ordered and decreed to pay to the plaintiffs a sum of Rupees 25,00,000/- as and by way of damages; (c) The defendant be directed to render a true and faithful account of the profits made by the defendant by selling the impugned products and the defendant be further directed to pay to the plaintiff such amount as may be found due and payable on such account being taken; (d) The defendant by themselves, their servants and agents and any person claiming through or under them be ordered and decreed to deliver up for destruction to the plaintiffs or their authorized representatives or attorneys, all the impugned products manufactured by the defendant that infringes the plaintiff No.1's subject patents; (e) For costs of the suit.

For plaintiffs
For Defendant

: Mr.Galdys Daniel
: Mr.K.Ashok Kumar

JUDGMENT

The plaintiff herein a Multinational Company involved in manufacturing of Pharma drugs. The present suit is filed alleging

infringement of its product patent “Linagliptin” by the defendant.

2. On receipt of the suit summon, the defendant has filed written statement, wherein, it is stated that it is true that it applied for license to manufacture the drug “Linagliptin Tablet” from the department of Drug Control and in December 2017, license was also issued for manufacturing the drug “Linagliptin Tablet”, though license to manufacture the said drug was obtained, they did not manufacture the said drug.

3. Meanwhile, on receipt of the suit summon on 23.04.2019, from the Court the defendant has surrendered the license to the Drug Controller vide letter dated 27.05.2019. The learned counsel for the defendant state that though the license to manufacture the drug “Linagliptin” was obtained by the defendant, there was no manufacturing or marketing of the said drug by the defendant. Therefore, there is no cause of action to sustain the suit.

4. From the suit records this Court finds that pending suit, pursuant to the application taken by the plaintiff, Mrs A.M.Amutha Ganesh,

Advocate was appointed as Commissioner to inspect the premises of the defendant. Accordingly, pursuant to the Commissioner warrant issued by this Court on 15.11.2019, the Advocate Commissioner has inspected the premises of the defendant along with the officials of Drug Control department on 23.12.2019. The Advocate Commissioner has submitted his report to this Court on 02.01.2020, wherein, the Advocate Commissioner has ascertained from the physical inspection of the defendant's premises as well as from the report of the Assistant Director of Drug Control, who accompanied him during the inspection that the defendant has not manufactured the product/formulation "Linagliptin Tablet" and/or "Linagliptin + Metformin Hydrochloride Tablets".

5. From this report, the fact that the defendant has not manufactured the drug for which the plaintiff claims patent is established. Even the semblance of any attempt to manufacture the said drug has come to halt by surrendering the license on 27.05.2019.

6. Further the defendant has given an undertaking that he will not manufacture the drug "Linagliptin" as long as the plaintiff holds the exclusive patent right of the said drug. Therefore, it is obvious that no

infringement has occurred.

7. In the light of the above fact and the undertaking given by the defendant, nothing survives in the suit. This Court opines that this is not a case fit for trial. Accordingly, the suit is dismissed. Parties shall bear their respective costs.

21.01.2020

Speaking Order / Non-Speaking Order
Index : yes/no
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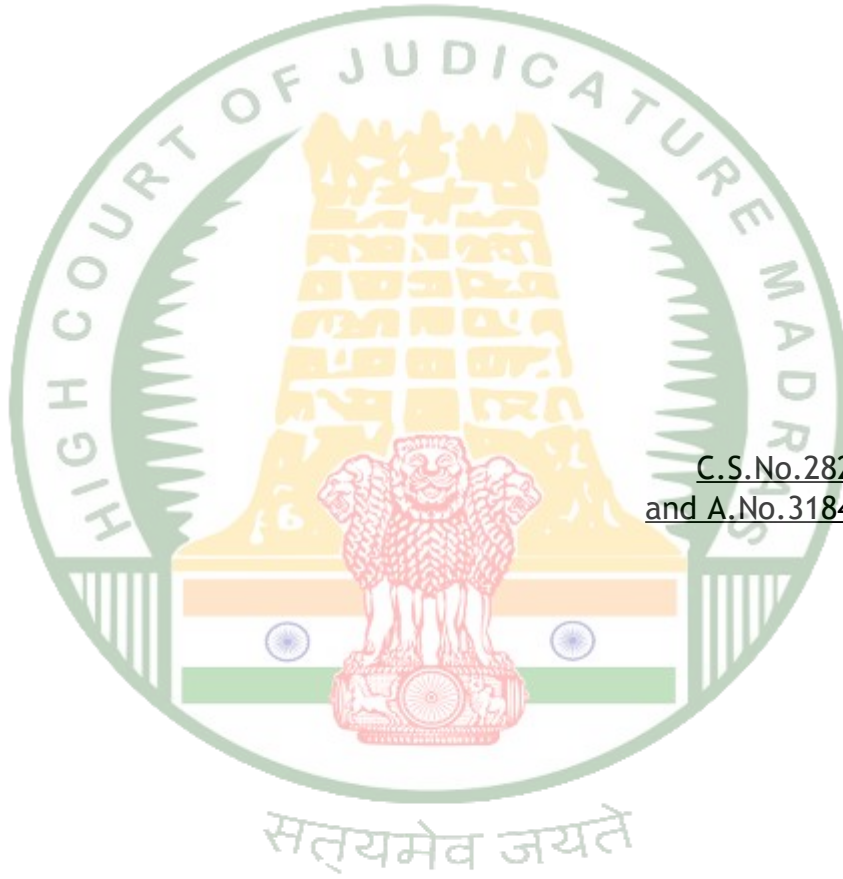


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Dr.G.JAYACHANDRAN,J.

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