

\$~5

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

+ CS(COMM) 85/2020

I.A. 2456/2020 (under Order XXXIX Rule 1 and 2 CPC)

NOVARTIS AG & ANR

.....Plaintiff

Represented by: Mr.Hemant Singh, Ms.Mamta Jha,
Dr.Shilpa Arora and Mr.Ankit
Arvind, Advocates.

versus

SUN PHARMACEUTICAL INDUSTRIES LTD. Defendant

Represented by: Ms.Rajeshwari H. and Mr.Tahir A.J.,
Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

%

25.08.2020

The hearing has been conducted through Video Conferencing.

I.A. 7320/2020 (delay in filing written statement)

1. By this application, defendant seeks condonation of delay of 149 days in filing the written statement.
2. Learned counsel for the defendant states that summons in the suit were accepted by the defendant on 20th February, 2020 when it came up before this Court on the first day. However, immediately on completion of the 30 days' period nationwide lockdown took place and the said period of limitation has since been suspended by the Hon'ble Supreme Court.
3. Learned counsel for the plaintiff states that considering the COVID-19 circumstances, he does not oppose the condonation of delay in filing the written statement.

4. Application is disposed of condoning the delay of 149 days in filing the written statement which took place due to exceptional circumstances of COVID-19 and lockdown.

5. Order be uploaded on the website of this Court.

CS(COMM) 85/2020

1. Written statement be taken on record.

2. In para-2 of the written statement the defendant has stated on affidavit as under:

2. At the outset, it is submitted that this Defendant only has certain samples of nilotinib and has not commercially produced or marketed the same. The defendant is currently using the product for regulatory test or approval purposes provided for under section 107A. The defendant at this juncture has no immediate plans to commercially market the product in India; and shall await expiry of suit patent IN 237430, or its invalidation in any proceeding or until its cessation or surrender by the Plaintiff or upon licence being granted by the Plaintiff.

3. From the written statement it is thus evident that the defendant recognises the suit patent of the plaintiff IN 237430 and states that till its invalidation or till its cessation or on a license being granted by the plaintiff, the defendant would not commercially market the product in India.

4. Considering this statement of the defendant the suit can be decreed invoking the jurisdiction under Order XII Rule 6 CPC in favour of the plaintiff and against the defendant.

5. Learned counsel for the plaintiff fairly states that in view of this written statement having been filed at the outset the plaintiff does not press the prayers (b), (c) and (d) in para-40 of the plaint.

6. Consequently, a decree is passed in favour of the plaintiff and against the defendant in terms of sub-para (a) of para-40 of the suit.

7. Decree sheet be drawn accordingly.

I.A. 2456/2020 (under Order XXXIX Rule 1 and 2 CPC)

Disposed of as infructuous.

MUKTA GUPTA, J.

AUGUST 25, 2020
‘vn’