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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) 227/2016 and C.M. APPLs. 26902/2016, 26903/2016,**
26904/2016, 26905/2016, and 5381/2020

GENETECH INC. & ORS.

..... Appellants

Through: Mr. Sandeep Sethi and Mr. Darpan
Wadhwa, Sr. Advocates with Ms. Niti
Dixit, Mr. Abhishek Tewari, Ms.
Samiksha Godiyal, Mr. Aubert
Sebastian, Mr. Muizz Drabu and Mr.
Aditya Garg, Advocates for Roche
Products (I) Pvt. Ltd.

versus

DRUGS CONTROLLER GENERAL OF INDIA & ORS.

..... Respondents

Through: None.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **11.02.2020**

1. In view of the order dated 17th December, 2019 passed by the Supreme Court in C.A. No. 9491/2019, the Court is of the considered view that the present appeal, along with FAO(OS) 181/2016, does not survive.

2. Mr. Sandeep Sethi, learned senior counsel appearing for the Appellant sought to contend that paragraph 28 of the aforesaid order dated 17th December, 2019 should not be read as having foreclosed the Appellant's

plea that the deletion by the learned Single Judge's order dated 25th April 2016 of the Drugs Controller General of India ('DCGI') as a party defendant in the original CS (OS) 3284/2015 was erroneous.

3. Para 28 of the order dated 17th December, 2019 of the Supreme Court reads as under:

“28. In view of the aforesaid, the impugned order is set aside and appeal is allowed. The interim direction given by the learned Single Judge on 25.4.2016 is accordingly made operational. At the same time, as the Reliance's suit is pending since 2016, the High Court is requested to dispose of the CS (OS) No. 3284/2015 expeditiously and preferably within 12 months of receipt of this order, In the meantime, to avoid prejudice to respondent No. 3, whenever government procurement is proposed for the drug by its generic name 'Trastuzumab', the Reliance should be allowed to participate with their biosimilar product, without any impediment. It is made clear that the views expressed here is only for the purpose of this appeal and should have no bearing in the proceeding pending in the High Court.”

4. Having considered the submissions of Mr. Sethi, and having read the aforesaid order dated 17th December, 2019 of the Supreme Court as a whole, the Court is not persuaded that the Supreme Court did not uphold the order dated 25th April, 2016 of the learned Single Judge in its entirety. The Court notes that the Supreme Court specifically directed that the said order “is accordingly made operational” and also requested that the suit itself to be disposed of “expeditiously and preferably within 12 months of the receipt of this order.” If the issue regarding the deletion of the DGCI as a party defendant were to be left open to be adjudicated upon by this Court i.e. the Division Bench, it would inevitably result in further delaying the disposal of

the suit itself. Clearly, that result was not envisaged by the directions of the Supreme Court reproduced hereinabove.

5. For the aforementioned reasons, the Court is unable to agree with Mr. Sethi that any aspect of the interim order dated 25th April, 2016 of the learned Single Judge in CS (OS) 3284/2016 remains to be adjudicated upon by this Court.

6. Consequently, FAO (OS) 227/2016 is also disposed of as having been rendered infructuous as a result of the order dated 17th December, 2019 of the Supreme Court in C.A. No. 9491/2019. The pending applications are also disposed of.

7. Order *dasti* under the signatures of Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 11, 2020

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