

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL NOTICE OF MOTION NO.657 OF 2017
IN
COMMERCIAL IP SUIT NO.724 OF 2017**

IPCA Laboratories Limited

....Applicant/Plaintiff

V/s.

M/s. Epsilon Biotech and Anr.

....Defendants

Mr. Minesh Andharia a/w. Mr. Jay Shah i/b. Krishna and Saurastri Associates
LLP for applicant/plaintiff.

None for defendants.

CORAM : K.R.SHRIRAM, J.

DATED : 17th FEBRUARY 2021

P.C. :

1 An ad-interim order was passed on 17th April 2017 after notice to defendants. Defendants did not appear on that day. The Court was pleased to grant ad-interim in terms of prayer clauses – (b) and (c) of the notice of motion.

2 Mr. Andharia, counsel for plaintiff states that plaintiff has filed an affidavit of service of one Abhijit M. Nakashe affirmed on 7th July 2017 confirming service of the ad-interim order upon defendants. Defendant no.1 has been served on 1st May 2017 and defendant no.2 has been served on 27th April 2017. No reply is filed. Defendants have not even entered appearance.

3 Therefore, the ad-interim order dated 17th April 2017 is confirmed as order in the notice of motion and notice of motion accordingly

stands disposed.

4 Mr. Andharia relies upon a copy of an affidavit of one Pravin V. Kajrekar affirmed on 4th January 2018 confirming service of the writ of summons on defendants. From the affidavit, it appears that the writ of summons have been served but the dates are not clear. In any event, it has been served before 4th January 2018.

5 Therefore, the time to file written statement under Order 8 Rule 1 of the Code of Civil Procedure, as amended for commercial suit has expired long ago. Defendants have, therefore, forfeited their right to file written statement.

6 Order 8 Rule 10 of the Code of Civil Procedure provides that where any party from whom a written statement is required under Rule 1 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit, and on the pronouncement of such judgment, a decree shall be drawn up.

7 In this case, an ad-interim order was passed against defendants after notice on 17th April 2017. Despite service of the said order, defendants have not filed affidavit in reply or taken out an application for recalling the ad-interim order. Despite service of writ of summons also no written statement has been filed within the time permitted. Leave under Clause 14 has also been granted.

8 Therefore, plaintiff shall be entitled to a decree in terms of prayer clauses - (a), (b) and (d). Since there is no evidence to prove prayer clause – (c), Mr. Andharia states that plaintiff will not press for prayer clause – (c).

9 Suit accordingly stands disposed.

(K.R. SHRIRAM, J.)