

A.No.3250 of 2021
in C.S.No.111 of 2021
Dr.G.JAYACHANDRAN, J.

The Suit is filed for injunction alleging infringement of the 'Product Patent' and 'Process Patent' by the defendant. Along with Suit in O.A.No.171 of 2021 was filed for interim injunction restraining the respondent from infringing the plaintiff's registered patents Nos.IN 299505('505), IN 312723('723) and IN 345194('194).

2. This Court, after hearing both sides vide order dated 29.07.2021 held that, the applicant/plaintiff-M/s.Cadila Healthcare Limited is entitled for the statutory protection of its patents, till the expiry of its term.

3. While so, the applicant/plaintiff has filed the Application No.3250 of 2021 under Section 151 of C.P.C., to pass an order of modification of Paragraph No.39 of the judgment/order dated 29.07.2021 in O.A.No.171 of 2021 in C.S.No.111 of 2021, in as much as the words **“is a patent of addition under Section 54 of the Act being”** be removed/deleted.

4. In the affidavit filed along with this application, it is contended

that, IN 299505 ('505) is not a patent of addition. It is an inventive step over the parent patent "IN 639". This Court in the rest of the order has in spirit held so. Therefore, reference to patent IN ('505) as a patent of addition under Section 54 of the Act, has to be removed or deleted, for the sake of clarity.

5. The Learned Senior Counsel appearing for the applicant/plaintiff would submit that, IN 299505 ('505) is an independent patent. This Court, after considering the evidence placed had rightly concluded that the applicant is entitled for protection for the full term. However, by use of expression, "the patent of addition under Section 54 of the Act" in penultimate paragraph No.39 of the judgment, the effect of the interim injunction is likely to be nullified by mis-interpretation and restrain the term of patent under Section 55 of the Act.

6. The Learned Senior Counsel appearing for the respondent/defendant has filed detailed counter, wherein, it is submitted that, the said application for modification is not maintainable since it amounts to review the order dated 29.07.2021. Furthermore, the very basis of the order will get changed if the modification is sought to be allowed. The expression of "patent of addition under Section 54 of the Act" found in paragraph No.39 of the order is not innocuous but is very essence of the judgment. The expression

“improvement or modification” is applied in the Patent Act, 1970 only in Section 54 of the Act and nowhere else. Therefore, the consequence of Section 55 of the Act atomically follows. The judicial understanding of “IN ('505) is a patent of addition” cannot be termed as an inadvertent or obvious factual error. It is evidently a conscious legal conclusion arrived at by the Court. Further, it is also stated that, the order of this Court dated 29.07.2021 already been challenged and is subject matter, before the Appellate Court. Therefore, the application to modify the order by invoking Section 151 of C.P.C is not maintainable.

7. Heard the Learned Counsel for the applicant/plaintiff and the Learned Counsel for the respondent/defendant at length. Perused the order of this Court passed on 29.07.2021.

8. The penultimate paragraph No.39 of the order reads as below:-

“39. For the reason stated above, this hold (sic) that the applicant patent IN'505 is **a patent of addition under Section 54 of the Act being** an improvement and modification of the prior invention resulting in enhancement of efficacy as envisaged under Section 3(1)(d) of the Patent Act. The challenge of the

respondent that the subsequent patent is an attempt to evergreen the monopoly is baseless. Except a bald claim, no convincing material placed before this Court how the specification claims No.1, 7 and 8 of IN'639 is Saroglitazar and the addition of Mg is disclosed or covered in the previous patent. It is difficult to accept, mere reference of Mg as "pharmaceutically acceptable salt" in claim 7 is suffice to infer the obviousness. Therefore, the applicant - M/s.Cadila Healthcare Ltd., is entitled for the statutory protection of its patents, till the expiry of the term."

9. The Learned Senior Counsel appearing for the applicant/plaintiff would submit that the expression "IN ('505) is a patent of addition under Section 54 of the Act being" is an innocuous reference not part of any pleadings or argument. Since this expression found in paragraph No.39 in isolation, it will cause misinterpretation and nullify the effect of the order.

10. Contrarily, the Learned Counsel for the respondent primarily submitted that, it is not an innocuous expression but meant by the Court and have a loaded meaning to the case in hand. If at all the applicant is aggrieved by existence of the said expression in the order, his remedy is to prefer appeal or review petition but not modification petition.

11. This Court substantially accept the submission of the Learned Counsel for the respondent. However, this order pronounced recently and fresh in the memory of this Court, it is to be conceded that the intention of this Court while delivering this order, was not to restrict the term of patent IN ('505) to get co-terminus with the parent patent IN ('639). IN ('505). Being improvement and modification of the prior invention, it was considered as independent patent and had delivered the said order. Therefore, if the expression “a patent of addition under Section 54 of the Act” is to stay in the order it will have a nullifying effect. I have to concede that, due to my omission to consider the impact of Section 55 of the Act, the applicant cannot be put to sufferance. The respondent has stated that, he has preferred appeal and same is pending. Though, the petition is filed for modification and not a review petition, to avoid delay in reaching the finality and also taking note of the fact that, the respondent has already preferred appeal and same is pending before the Appellate Court, this Court is of the view that the expression “**a patent of addition under Section 54 of the Act being**” is struck off from paragraph No.39 of the order dated 29.07.2021 passed in O.A.No.171 of 2021 and same shall be read as below:-

“39. For the reason stated above, this Court holds that

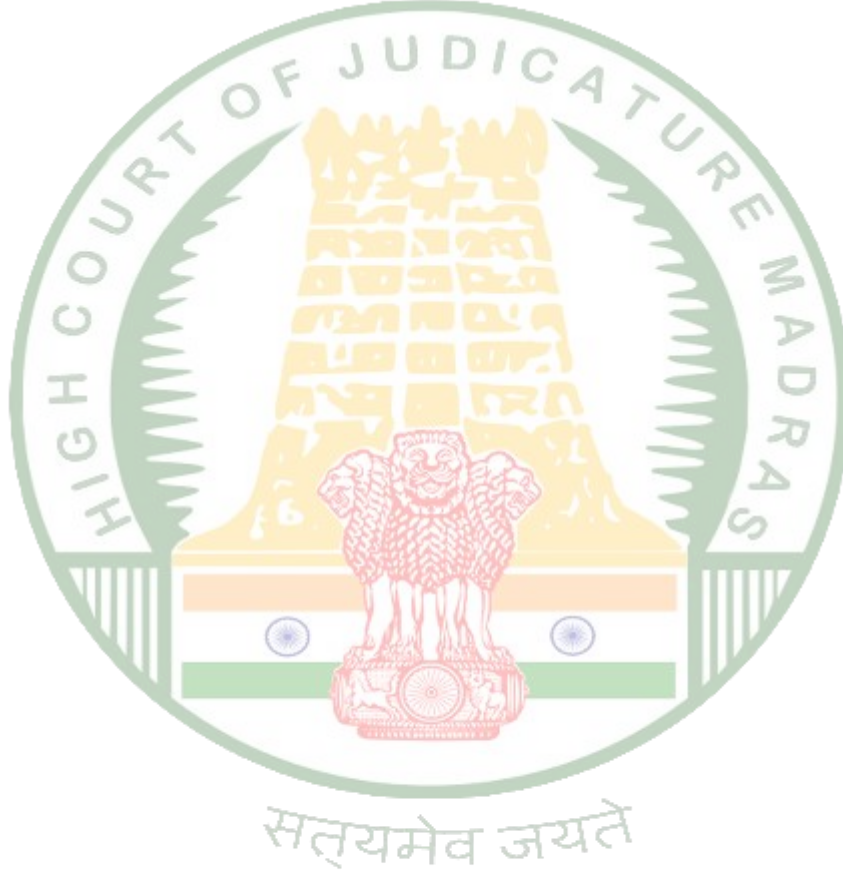
the applicant patent IN'505 is an improvement and modification of the prior invention resulting in enhancement of efficacy as envisaged under Section 3(1)(d) of the Patent Act. The challenge of the respondent that the subsequent patent is an attempt to evergreen the monopoly is baseless. Except a bald claim, no convincing material placed before this Court how the specification claims No.1, 7 and 8 of IN'639 is Saroglitazar and the addition of Mg is disclosed or covered in the previous patent. It is difficult to accept, mere reference of Mg as "pharmaceutically acceptable salt" in claim 7 is suffice to infer the obviousness. Therefore, the applicant - M/s.Cadila Healthcare Ltd., is entitled for the statutory protection of its patents, till the expiry of the term."

13. This Court makes it very clear that the omission of the above expression shall in no any way prejudice the interest of the parties. The deletion of the said expression is made invoking the inherent power of the Court under Section 151 of C.P.C with the view that the parties shall proceed with the trial and establish their right as expeditiously as possible and without being entangled in the interlocutory stage. If any review or appeal is filed, as against the order as modified, the limitation shall be reconciled from today.

14. Accordingly, with the above modification, the *Application*
No.3250 of 2021 is ordered. No costs.

21.10.2021

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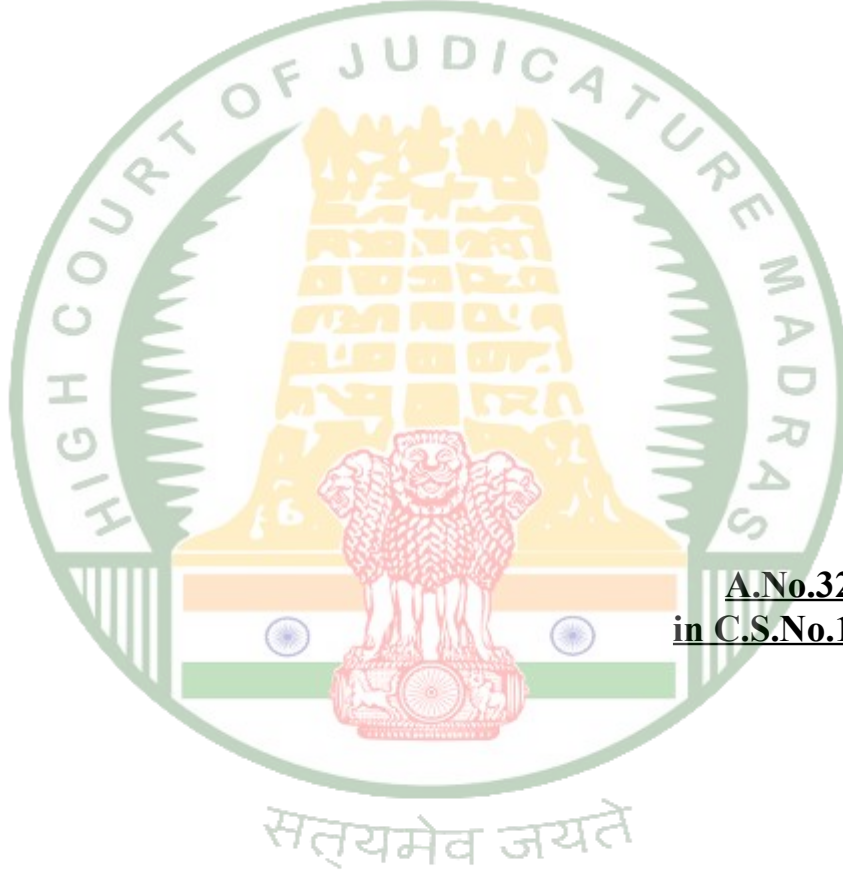


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