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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESEVALU

ORIGINAL SIDE APPEAL (CAD) NOS.135 TO 140 OF 2021
AND CMP.NOS.20488, 20496, 20498 & 20500 TO 20502 OF 2021

Cipla Limited

.. Appellant in
all the appeals

Vs

Sun Pharmaceutical Industries
Ltd., Chennai-35

.. Respondent in
all the appeals

Prayer :

APPEALS under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Madras High Court Letters Patent and Section 13(1-A) of the Commercial Courts Act, 2015 against the common order dated 07.10.2021 in OA.Nos.281 to 283 of 2021 and A.Nos.3501 to 3503 of 2021 in OA.Nos.281 to 283 of 2021 respectively in C.S.(Comm.Div.) No.176 of 2021.

Prayer in OA.Nos.281 to 283/2021 & A.Nos.3501 to 3503/2021 :

A.Nos.3501 to 3503 of 2021 :

Applications praying to vacate the order of injunction dated 30/04/2021 which was extended vide order dated 27/05/2021 granted in O.A.NO.281 of 2021 respectively in C.S.NO.176 of 2021 with exemplary costs.

OA NO.281 of 2021:

Original Application praying to grant an Interim injunction restraining the Respondent their partners or proprietors their servants, agents, stockists, distributors, wholesalers ,



retailers and printers and all persons acting, by through or under the direction of Respondent as the case may be from reproducing, printing or publishing any label or packaging including cartons, tubes, and caps including any packaging for the purpose of exports which are a colourable imitation or substantial reproduction of the Applicants subject products BUDECORT RESPULES and DUOLIN RESPULES artistic packaging, trade dress or labels represented as budecort and duolin amounting to infringement of copyright in the artistic work.

OA NO.282 of 2021:

Original Application praying to grant an Interim injunction restraining the Respondent their Directors, Partners, or proprietors, as the case may be from manufacturing, packaging, selling, offering for sale or distribution, exporting, advertising, directly or indirectly dealing in medicinal products, or goods of any description bearing the mark RESPULE and/or any other marks that are identical or deceptively similar to the Applicants registered trademark RESPULE or containing any component of the subject trademark RESPULE i.e. amounting to infringement of the Applicants registered trademark Number 1127296.

OA NO.283 of 2021:

Original Application praying to grant an Interim injunction restraining the Respondent their partners or proprietors, their servants, agents, stockists, distributors, wholesalers, retailers and printers and all persons acting, by through or under the direction of Respondent as the case may be from manufacturing packaging selling offering for sale or distribution, exporting, advertising, directly or indirectly dealing in medicinal products or goods or any description using a packaging identical or deceptively similar to the Applicants packaging for Budesonide Respules and DUOLIN Levosal Butamol Respules represented as budecort and either alone or in combination with the mark RESPULE or any other deceptively similar mark in any manner in respect of medicinal products or any other products and doing any other thing as may lead to passing off of their goods as those of the Applicant

C.S.NO.176 of 2021:

For the relief of Permanent injunction restraining the Defendant herein as prayed in Prayer A at Rs.2000/- for which a court fee of Rs.150 is paid u/s 27(b) of the Tamil Nadu Court Fees and Suit Valuation Act 1955 read with Appendix I-A of the Madras High Court Fee Rules.



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For Appellant : Mr.P.S.Raman, Senior
(in all) Counsel appearing for
Mr.K.Premchandrar
For Respondent(in all) : Mr.Satish Parasaran, Senior
Counsel appearing for
Mr.Rajesh Ramanathan

COMMON JUDGMENT

(Judgment was delivered by the Hon'ble Acting Chief Justice)

We have heard the respective learned Senior Counsel appearing for both parties.

2. The challenge made is to the common order dated 07.10.2021 passed by the learned Single Judge whereby, in paragraph 7, with regard to use of the words 'RESPULES, BUDEFEX and DUOZ', it was held that the claim of the plaintiff - appellant herein to use the same exclusively was an issue, which could be decided only after trial and that there should be no restraint order. It was also held in paragraph 8 that all the other interim orders passed restraining the defendant - respondent herein stood modified.

3. The case has a chequered history with reference to the suit filed by the appellant herein - plaintiff. An ad-interim injunction was granted by the learned Single Judge, which was challenged by the defendant - non appellant, by filing OSA(CAD) Nos.8 to 13 of 2021. By a common judgment dated 06.7.2021, the First Bench of this Court passed an order with reference to the arguments made by the parties. After the said common judgment, the matter was to be reconsidered not only with respect to continuance or vacation of the ad-interim order, but also on larger injunction.

4. It is not in dispute by either parties that the issue with respect to larger injunction was not considered by the learned Single Judge specifically in reference to use of small letters and also the word 'RESPULES'. Both the parties agree for remanding the matters for a fresh consideration in the light of the said common judgment of the First Bench and more particularly with reference to use of the word 'RESPULES' and small letters.

5. In the light of the above, the impugned common order dated 07.10.2021 is set aside and the matters are remanded to the learned Single Judge for fresh consideration. The parties before this Court shall refer to the said common judgment of the



First Bench for necessary consideration not only with respect to continuance or vacation of the ad-interim order, but also to consider the matter for grant of larger injunction or its refusal.

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6. There is one more issue regarding colour scheme. The appellant herein has accepted change to colour scheme. This is recorded. To that extent, the issue stands concluded and it is made clear that it shall not be agitated by either parties before the learned Single Judge.

7. With the above observations, the original side appeals are disposed of. Consequently, the connected CMPs are closed. There will be no order as to costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

RS

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.Rajesh Ramanathan, Advocate, S.R.No.67339

OSA.(CAD) Nos.135 to 140 of 2021
& CMP.Nos.20488, 20496, 20498
& 20500 to 20502 of 2021

AJS (CO)
PM/23/12/2021