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

+ **CS(COMM) 242/2021 & I.A. 6799/2021 (Order XXXIX Rules 1&2 CPC)**

DR.REDDYS LABORATORIES LIMITED Plaintiff

Through **Mr. Ranjan Narula and Mr. Shashi Pratap Ojha, Advs.**

versus

**WEST-COAST PHARMACEUTICAL
WORKS LTD.**

..... Defendant

Through **Mr. Atit Thakore, Adv**

CORAM:

HON'BLE MR. JUSTICE C .HARI SHANKAR

ORDER (ORAL)

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28.09.2021

(Video-Conferencing)

CS(COMM) 242/2021 & I.A. 6799/2021 (Order XXXIX Rules 1&2 CPC)

1. Consequent to the directions passed by this Court on earlier dates of hearing, an affidavit has been filed by the defendant, paras 1 to 7 whereof are reproduced as under:

"1. The defendant company agreed and acknowledged the plaintiff No.1-company having registered Trademark "OMEZ".

2. The defendant hereby undertake to this Honourable court and to the Plaintiff that, defendant will neither by itself nor through its Director, Group of Company and its divisions assigned and its business, presence, Distributor and dealers, present manufacturing, selling, offering for sale, directly or indirectly dealing in the impugned Trademark "OMES" or in combination or in any other form as it may amount to

infringement of Plaintiffs Trademark Registration as mentioned in para 9 of the Plaint.

3. The defendant admitted and accepted the rights of the Plaintiff and acknowledged the validity thereof and further undertake that, the defendant shall not file any application seeking cancellation of the Plaintiffs registered Trademark.

4. The defendant and its directors or representative, officers, servants, agents and distributor and its system concerned all other person acting one on behalf of the defendant undertakes with immediate effect not to use the mark OMES or any other mark deceptively similar to the plaintiffs mark OMEZ or do any act that may resulted passing off its goods and business as and for those of the Plaintiffs.

5. The defendant further stated that, defendant already removed all the listing of the impugned mark OMES and/or any other mark deceptively to similar to the plaintiff's mark OMEZ if any, from its web site, B2B web sites or any other online directories, B2C website or portals that were used by the defendant to promote its product bearing the mark OMES and/or any other mark identical or deceptively similar to the plaintiffs mark OMEZ. The defendant shall co-operate in removing any listing that, the Plaintiff come across post recording of the settlement if any.

6. The defendant further confirms that, it has neither applied for or nor registered the Trademark OMEZ or any other mark identical/deceptively similar to the plaintiffs registered trademark OMEZ. The defendant further undertakes not to register at any time in future any deceptive variations of the plaintiff trademark OMEZ.

7. The defendant hereby declares and states that, the defendant has not manufactured, sell and marketed capsule, tablets under the Brand name of "OMEZ". The defendant further state and declare that, defendant not earned any revenue from the said OMEZ Brand. It is also agreed that, decree may be passed in terms of Paragraph No.30(i), (ii) of the present Suit in favor of the Plaintiff company in terms of the aforesaid settlement."

2. Mr. Narula, learned counsel for the plaintiff, submits that in view of the aforesaid undertaking, the suit may be decreed in terms thereof, but submits that the defendant ought to be burdened with costs for having subjected to the plaintiff to an unnecessary litigative exercise and also taken up the time of this Court. He, however, submits that the costs may be paid to some Covid relief related fund.

3. Mr. Thakore, learned counsel for the defendant, has pleaded, with all persuasion at his command, that no costs be imposed.

4. The dispute forming subject matter of these proceedings, does not survive for adjudication, in view of the affidavit filed by the defendant and the undertaking therein to which the defendant shall remain bound at all times.

5. However, as this litigation has taken up the time of this Court and also subjecting the plaintiff to an unnecessary litigative exercise, I am of the opinion that the defendant ought to be subjected to token costs.

6. As such, the defendant is directed to deposit, with the Registrar General of this Court, cost of ₹11,000/-, by way of a cross cheque/demand draft favouring to Prime Minister's National Relief Fund (PMNRF).

7. The suit stands decreed in the above terms.

8. The Registry is directed to draw up a decree-sheet accordingly.

9. In view of the law laid down in *Munish Kalra v. Kiran Madan*¹, the plaintiff would be entitled to complete refund of the court fee deposited by it the Registry is directed accordingly.

C. HARI SHANKAR, J

SEPTEMBER 28, 2021

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