

Ultratech Pharmaceuticals & another ... Defendants

Mr. Atmaram Patade a/w. Mr. Mohini Thorat and Mr. Suraj Naik, i/by. Atmaram Patade for defendants.

Mr. D. M. Patil, Section Officer from the office of Court Receiver.

CORAM : MANISH PITALE, J

DATE : 2nd JANUARY, 2023

P.C. :

. In this application, by order dated 3rd November, 2021, this Court granted ad-interim reliefs in favour of the plaintiff in terms of prayer clauses (a) and (c).

2. The defendants have been served. They have appeared through counsel. A statement is made on behalf of the defendants that upon service of notice, the defendants have stopped using the impugned trade marks. It is also indicated that the defendants propose settlement in the matter, but the terms of settlement could not be finalized. It is further stated that the defendants undertake not to use the impugned trade marks.

3. In this light, the learned counsel for the plaintiff submits that leave petition filed under Clause XIV of the Letters Patent may be allowed, particularly because the defendants have been served and they are represented by counsel.

4. This Court has considered the contents of the leave petition. The defendants have been served and there are sufficient grounds for combining the cause of action of infringement of trade marks with that of passing off. Hence, leave petition is allowed and disposed of.

5. In the light of the leave petition being allowed, learned counsel for the plaintiff is pressing for grant of interim relief in terms of prayer clause (b), pertaining to the cause of action of passing off. In that context, the learned counsel has relied upon paragraph No.15 of the plaint. This Court has perused the said paragraph as well as other pleadings in the plaint and documents placed on record. A prima facie case is indeed made out in favour of the plaintiff in terms of prayer clause (b) also.

6. This Court is of the opinion that in the light of the statements made on behalf of the defendants that they have discontinued the use of impugned trade marks upon service and they undertake not to use the impugned trade marks in future, the ad-interim reliefs granted earlier can be continued and prayer clause (b) can also be granted.

7. In view of the above, the present application is allowed in terms of prayer clauses (a), (b) and (c).

8. It is made clear that the parties would be at liberty to amicably settle their disputes.

(MANISH PITALE, J)