

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION (LODGING) NO. 24667 OF 2022
WITH
COURT RECEIVER'S REPORT NO. 291 OF 2022
IN
COMMERCIAL IP SUIT NO. 117 OF 2023**

Sun Pharma Laboratories Limited

...Applicant/Plaintiff

Versus

J.M. Laboratories & Anr.

...Defendants

* * *

- Mr. Hiren Kamod, Mr. Vaibhav Keni, Ms. Neha Iyer, Mr. Rohan Lopes, Mr. Prem Khullar and Mr. Anees Patel i/by Legasis Partners, for Applicant/Plaintiff.
- Ms. Priyanka Surve i/by Madnar Soman, for Defendant No. 1.
- Mr. Prashant Daradale, for Defendant No. 2.
- Mrs. Rekha Rane, IInd Assistant to Court Receiver, is present.

* * *

CORAM : MANISH PITALE, J

DATE : 10th APRIL, 2023.

P. C. :

1. By order dated 03rd August, 2022, this Court granted *ex-parte* ad-interim reliefs in favour of the Plaintiff. It is recorded in the subsequent order dated 21st November, 2022, that when the Additional Special Receiver went to execute the order of this Court, there was total non co-operation on the part of Defendant No. 1. This Court further directed the Defendant No. 1 to make appropriate disclosures regarding the impugned products.

2. Subsequently, in the order dated 14th March, 2023, this Court recorded that Defendant No. 1 appearing through Counsel was

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ready to make a statement that the Suit could be decreed as per prayer clauses (a) and (b). The Defendant No. 2 has filed an affidavit, also submitting that the Suit could be decreed in terms of prayer clauses (a) and (b). The said affidavit is said to be still lying in objections.

3. Today, when the matter is called out for hearing, the learned Counsel appearing for Defendant No. 1 reiterates that the said Defendant is ready to submit to a decree in terms of prayer clauses (a) and (b). The learned Counsel appearing for Defendant No. 2 also submits that as per the affidavit filed on behalf of Defendant No. 2, the Suit could be decreed in terms of prayer clauses (a) and (b).

4. The Defendant No. 1 is the Manufacturer while Defendant No. 2 is the party marketing the impugned product.

5. The Suit could be decreed as per prayer clauses (a) and (b), subject to certain costs that need to be imposed upon Defendant No. 1 in the facts and circumstances of the present case. In paragraph no. 19 of the plaint, it is specifically stated that this very Defendant had earlier introduced into the market impugned product bearing the infringing trademark “PANTOCED”, which was found to be very close to the registered trademark of the Plaintiff “PANTOCID”. At Exhibit “H” along with the plaint, *ex-parte* ad-interim order dated 03rd

January, 2022, is placed on record, which shows that this Court found substance in the contentions raised by the very same Plaintiff against the very same Defendant No. 1 regarding infringement of the registered trademark by use of the infringing trademark “PANTOCED”. The said Suit wherein *ex-parte* ad-interim order was passed by this Court bearing Commercial IP Suit No. 464 of 2021, along with interim application, are still pending.

6. In the backdrop of the said proceedings and despite the aforementioned order dated 03rd January, 2022, passed by this Court, granting *ex-parte* ad-interim order against the very same Defendant No. 1, it is found that in the present case, the said Defendant has indulged in such conduct by using the infringing trademark “PANTOCIL”. It appears that Defendant No. 1 is a habitual offender and therefore, while disposing of the present Suit, appropriate costs need to be imposed.

7. In view of the above, Suit is decreed as per prayer clauses (a) and (b), which read as follows :

“a. that the Defendants by themselves, their proprietors, partners, directors, servants, agents, stockists, distributors, dealers, franchisees, licensees, assigns, predecessors and all persons claiming through and/or under them or acting on their behalf be restrained by a perpetual order and

injunction of this Hon'ble Court from infringing the Plaintiff's said registered trade mark PANTOCID bearing registration no.791979, PANTOCID-IV bearing no.4646473, PANTOCID DSR bearing no.4632166 and PANTOCID L bearing no.4494365, all in class 5, by the use of the impugned trade mark PANTOCIL / PANTOCIL-40/ PANTOCIL DSR or any other trade mark identical with and/or deceptively similar to the Plaintiff's said registered trade mark bearing nos.791979, 4646473, 4632166 and 4494365, all in class 5, in respect of the goods covered by the Plaintiff's said registrations or similar or like goods or in any other manner, whatsoever;

- b. that the Defendants by themselves, their proprietors, partners, directors, servants, agents, stockists, distributors, dealers, franchisees, licensees, assigns, predecessors and all persons claiming through and/or under them or acting on their behalf be restrained by a perpetual order and injunction of this Hon'ble Court from manufacturing, selling, advertising, distributing, marketing, exhibiting for sale or otherwise dealing in the impugned goods or similar or like goods under the impugned trade mark PANTOCIL / PANTOCIL-40 / PANTOCIL DSR or any other trade mark identical with and/or deceptively similar to the Plaintiff's well-known trade mark PANTOCID, so as to pass off the Defendants' impugned goods or like goods as and for the Plaintiff's well-known*

goods or in any other manner whatsoever;"

8. The Defendant No. 1 shall deposit costs of Rs. 1,00,000/- in favour of the Tata Memorial Hospital to be used for Research and Treatment of patients at the said establishment. The said amount be deposited within four weeks from today. The details of the Bank Account are as follow :

Bank Name :	Central Bank of India
Branch :	Tata Memorial Hospital
Address :	Dr. Ernest Borges Road, Parel, Mumbai - 400 012
Bank Account No.	1002449683
IFSC Code :	CBIN0284241
MICR Code :	400016043

9. In view of the disposal of the suit, all pending applications stand disposed of.

10. In the light of the above, the Court Receiver's Report is disposed of and the Court Receiver is discharged, without passing up of accounts.

11. List the present proceedings only for asserting compliance on 13th June, 2023.

(MANISH PITALE, J.)