



\$~12

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

Date of Decision:-19th December, 2023.

+ **CS(COMM) 481/2018, I.As. 14756/2007 & 19415/2012**

LILLY ICOS LLC

..... Plaintiff

Through: Ms. Prakriti Varshney, Mr. Prashant,
Advvs. (M. 9871678017)

versus

VIVEK PHARMACHEM AND ANR.

..... Defendants

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Plaintiff - Lilly ICOS LLC has filed the present case seeking permanent injunction restraining trademark infringement, damages, passing off and unfair competition.
3. The Plaintiff, who is the owner of the mark 'CIALIS', has filed the present suit seeking protection of its mark used for pharmaceutical preparations. The grievance of the Plaintiff was in respect of the mark 'ZYALIS'/'ZYDALIS' used by the Defendants.
4. Ld. counsel for the Plaintiff submits that in the present case, the product 'ZYALIS'/'ZYDALIS' was manufactured by Defendant No.1 but marketed by Defendant No.2. Insofar as the Defendant No.2 is concerned, the suit is already settled vide Settlement Agreement dated 28th March, 2022. Accordingly, the suit was decreed vide order dated 27th April, 2022 *qua* Defendant No. 2 in the terms of the said Settlement Agreement.



5. In the present case, Defendant No.1 had appeared on a few occasions but thereafter stopped appearing in the matter. Further, as recorded in order dated 27th April, 2022 Id. Counsel for Defendant No. 2 submitted that initially, he was representing Defendant No. 1 but he was not receiving any instructions from Defendant No. 1 and that he will be moving an appropriate application to seek discharge from appearing on behalf of Defendant No. 1. Id. Counsel had moved an application seeking discharge from representing Defendant No.1 and the same was allowed and disposed of vide order dated 20th January, 2023.

6. In ***Disney Enterprises Inc. & Anr. v. Balraj Muttneja & Ors.,2014: DHC:964***, it has been held by this Court that leading formal evidence would not be required where the Defendant has not appeared in matter or filed a written statement. The relevant portion of the judgment is set out below:

“5. The plaintiffs, despite having been granted sufficient time and several opportunities, have failed to get their affidavits for leading ex parte evidence on record. However, it is not deemed expedient to further await the same and allow this matter to languish, for the reason that I have in Indian Performing Rights Society Ltd. Vs. Gauhati Town Club MANU/DE/0582/2013 held that where the defendant is ex parte and the material before the Court is sufficient to allow the claim of the plaintiff, the time of the Court should not be wasted in directing ex parte evidence to be recorded and which mostly is nothing but a repetition of the contents of the plaint.”

7. In the present case, Defendant No.1 is already aware of the filing of the suit and had stopped appearing of his own volition. Further, the Defendant No.1 was a manufacturing agent of the Defendant No.2. In view thereof, no *ex parte* evidence would be required in the present case.



8. The suit has already been decreed in terms of Settlement Agreement dated 28th March, 2022. The terms of the same have been perused by the Court and they are lawful. Accordingly, exercising the power of the Court of summary judgment under Order XIII A of the CPC it is directed that the suit would be liable to be decreed *qua* Defendant No.1 in broadly similar terms. Accordingly, the suit is decreed as under against Defendant no.1:

- (a) *The Defendant no.1 shall not challenge the ownership of the Plaintiff for the mark CIALIS;*
 - (b) *The Defendant no.1, is permitted to use the mark ZYDALIS if permitted by Defendant no.2;*
 - (c) *The Defendant no.1 shall not adopt, register and/or use the Plaintiff's trade mark "CIALIS".*
 - (d) *The Defendant no.1 shall also not adopt, register and/or use any mark, having the suffix "ALIS" in relation to any preparations/products falling in the category of erectile dysfunction drugs.*
9. The suit is decreed in the above terms. Decree sheet be drawn accordingly.
10. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 19, 2023/dk/kt