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

+ **FAO(OS) (COMM) 269/2024**

ZYDUS LIFESCIENCES LIMITEDAppellant

Through: Mr. Dushyant Dave & Mr. Rajshekhar Rao, Sr. Advs. with Mr. Adarsh Ramanujan, Ms. Bitika Sharma, Ms. Vrinda Pathak, Mr. Rajnish Kumar, Mr. S.L. Soujanya & Ms. Surabhi Mahajan, Advs.

versus

F. HOFFMANN-LA ROCHE AG & ANR.Respondents

Through: Mr. Sandeep Sethi & Mr. Arvind Nigam, Sr. Advs. with Mr. Shrawan Chopra, Ms. Prachi Agarwal, Mr. Achyut Tewari, Mr. Aayush Maheshwari, Ms. Ruby Ahuja, Mr. Vishal, Mr. N. Mahabir, Mr. Agnish Aditya & Ms. Priya Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

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21.11.2024

CAV 565/2024

Since the caveator/ respondent has already entered appearance, the caveat stands discharged.

CM APPLs. 67790/2024 (Ex.) & 67791/2024 (Ex.)

Allowed subject to all just exceptions.

The applications stand disposed of.

FAO(OS) (COMM) 269/2024 and CM APPL. 67788/2024 (Stay),



CM APPL. 67789/2024 (Addl. Document)

1. This appeal is directed against the order dated 05 November 2024 passed by the learned Single Judge and in terms of which an interim order dated 09 July 2024 which operated in the suit has been provisioned to continue till the learned Judge was to take up IA No. 33509/2024, which was the application referable to Order XXXIX Rules 1 & 2 of the **Code of Civil Procedure, 1908**¹.

2. In order to appreciate the challenge which stands mounted to the extension of the order of 09 July 2024, it would be pertinent to take note of the following facts.

3. In the suit for infringement which had been instituted by the respondents, on 09 July 2024, the learned Judge while considering the application for injunction, had passed an ad interim injunction in the following terms:

“10. In light of these considerations – fairness, equity, and the balance of convenience – the Court finds compelling reasons to issue an injunction. Accordingly, till the next date of hearing, the Defendants are restrained from marketing / selling their product “Sigrima”, which is a biological similar of Plaintiffs’ “Perjeta ®”/ “Pertuzumab.”

As is manifest from the above, the order had provided for the defendants being restrained from marketing/ selling their product “Sigrima” till the next date of hearing.

4. When the matter was taken up again on 18 July 2024 the aforementioned interim order of 09 July 2024 was continued till the next date of hearing. The matter thereafter appears to have been taken up for consideration before the learned Judge on different dates,

¹ CPC



including on 14 August 2024, 20 August 2024, 21 August 2024, 22 August 2024, 28 August 2024, 30 August 2024, 02 September 2024 and 06 September 2024. On the last of those dates, the learned Judge had, after hearing extensive arguments addressed on IA 33509/2024, reserved judgment. Judgment thereon was ultimately pronounced on IA 33509/2024 on 09 October 2024.

5. By virtue of the said judgment, the learned Judge dismissed the application of the respondent-plaintiff under Order XXXIX Rules 1 & 2 and also discharged the ad interim order dated 09 July 2024. By way of a separate order passed on the same date, the learned Judge further provided that the interim order which had continued would operate for a further period of two weeks in order to enable the respondent-plaintiff to take appropriate remedies.

6. The order in terms of which the order dated 09 July 2024 was continued was subjected to challenge in **Zydus Lifesciences Limited v. F-Hoffman-La Roche AG & Anr²**. That appeal came to be allowed by us on 15 October 2024 in the following terms:

“1. The appellant is aggrieved by the order dated 09 October 2024 passed by the learned Single Judge which reads as follows:-

“1. Vide separate judgment pronounced today, IA No. 33509/2024 of the plaintiffs is dismissed.

2. At this stage, the learned counsel for the plaintiffs states that as the interim order has been continuing since the past almost three months, this Court may continue the interim order earlier granted for some more time to enable the plaintiffs to take their remedy in accordance with law.

3. Though the said prayer has been opposed by the learned counsel for the defendant, however, considering that the defendant was under an injunction by virtue of the earlier order dated 09.07.2024 passed by this Court for almost three months, I do not see any reason for not granting a period of

² FAO(OS)(COMM) 235/2024



two weeks extension to enable the plaintiffs to take appropriate remedy in accordance with law.

4. In the interest of justice, the interim order dated 09.07.2024 is continued for a further period of two weeks from today, i.e., 23.10.2024.

5. Renotify before the roaster bench for further proceedings on 02.12.2024.”

2. As is evident from the record, by a separate judgment which had been pronounced on that day itself on IA No. 33509/2024, the prayer for interim injunction was refused. It is only thereafter and taking on board a request made on behalf of the plaintiff, that the learned Judge proceeded to frame directions for the earlier injunction dated 09 July 2024 which was operating in the suit to remain in operation for a further period of two weeks.

3. In our considered opinion, once IA No. 33509/2024 had come to be dismissed on merits and after contest, there was clearly no justification for the learned Judge to revive an ad interim injunction which operated in the suit.

4. In view of the aforesaid, we find ourselves unable to sustain the order impugned.

5. The appeal is accordingly allowed. The impugned order dated 09 October 2024 is hereby set aside.

6. This order, however, shall be without prejudice to the rights and contentions of the respondents in any appeal that they may choose to institute if aggrieved by the principal decision passed on IA No. 33509/2024.

7. It is clarified that we have not examined the merits of the order that the learned Single Judge has passed on IA No. 33509/2024.”

7. The respondent-plaintiff, aggrieved by the principal order of 09 October 2024 and in terms of which the learned Judge had proceeded to dismiss IA 33509/2024 as well as vacate the ad interim injunction, preferred a separate appeal in **F. Hoffmann-La Roche AG & Anr. v. Zydus Lifesciences Limited**³. That appeal came up for consideration before us on 16 October 2024 and ultimately came to be allowed in the following terms:

³ FAO(OS)(COMM) 236/2024



“1. This appeal is directed against the order dated 09 October 2024 in terms of which the learned Single Judge, while taking up for consideration I.A. 33509/2024 and which had alleged a violation of an undertaking and assurance tendered by the appellants, has proceeded to vacate the interim injunction dated 09 July 2024. The operative directions framed by the Court while disposing of that application read as follows:-

“38. Accordingly, the present application under *Order XXXIX rules 1 & 2 CPC* of the plaintiffs is dismissed in the above terms and the *ad interim* order dated 09.07.2024 passed by the predecessor bench is vacated.”

2. Of significance, however, are the following observations rendered by the learned Single Judge in the course of considering the aforementioned application:-

“9. Even otherwise, this Court is not sitting either in review or contempt or appeal over the said order dated 09.07.2024 and thus has to adjudicate upon the merits of the present application based on the records before it and arguments addressed in relation thereto. More so, since the said order dated 09.07.2024 was only “... .. *till the next date of hearing,*”.

10. When the earlier application being I.A. 4196/2024 came up for hearing before the predecessor bench on 23.02.2024, the circumstances were different from that when the present application was listed before the same bench on 09.07.2204 due to the subsequent developments. So, the yardstick applied by the predecessor bench, while passing the two order/s as aforesaid, was entirely different. Today, the situation is as such as it was prevalent on 23.02.2024 when the predecessor bench was adjudicating the earlier application without any ‘*claim mapping*’, the same is the situation in the present application.

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35. The contention of the learned counsel/s for the defendant that the order dated 09.07.2204 deserves to be vacated since the defendant was served with an advance copy of the present application late in the day and the same was taken up by the learned predecessor bench late in the day, and that too upon urgent mentioning, needs not to be gone into.

36. Lastly, the grant of relief of *ad interim-injunction* is of a discretionary nature, for grant of which the party like the plaintiffs herein have to satisfy a Court of law by setting out that it has a *prima facie case* in their favour with the *balance of convenience* also in their favour and that they are likely to suffer *irreparable loss and injury* as well as ‘*claim mapping*’



or like in a suit of patent infringement of the present nature, in terms of the aforesaid, the plaintiffs have been unable to make out any case in their favour and against the defendants in the absence thereof.”

3. As would be evident from the above, the learned Single Judge had at more than one place in the impugned order observed that it was not proposing to go into the validity of the order dated 09 July 2024. The Court categorically negated the prayer for vacation of that order observing that it need “not to be gone into.” However, while framing the penultimate direction, the Court has done exactly the opposite and vacated the order of 09 July 2024.

4. We find ourselves unable to sustain the aforesaid conclusions bearing in mind what the learned Single Judge himself had chosen to record in the paragraphs extracted above. Once the learned Single Judge had taken the position that the correctness or otherwise of 09 July 2024 was not being proposed to be gone into, we fail to comprehend or appreciate how the said order could have been ultimately vacated. We consequently have no hesitation in holding that the impugned order is rendered wholly unsustainable.

5. We accordingly allow the instant appeal and set aside the order of 09 October 2024. I.A. 33509/2024 shall consequently stand revived on the board of the learned Single Judge to be considered and examined afresh and in accordance with law.

6. We further leave it open to the appellant as well as the respondents to pursue such other interlocutory applications as may be pending consideration of the learned Single Judge.

7. Though needless to state we deem it appropriate to observe that this order shall not be construed as an expression of opinion on the merits of the injunction which had been granted or the prayer for its vacation as sought by the appellant.

8. Bearing in mind the fact that the application now stands revived, we prepone the date fixed in the main suit proceedings to 05.11.2024.”

8. Our decision of 16 October 2024 is thereafter stated to have been challenged before the Supreme Court by way of a **Special Leave Petition⁴** in **Zydus Lifesciences Ltd. v. F. Hoffman-La Roche AG & Anr⁵**, and which has since then come to be disposed of by an order of 18 November 2024 which reads as under:

⁴ SLP

⁵ SLP(C) Diary No. 48862/2024



“Permission to file the special leave petition without the certified/ plain copy of the impugned judgment is granted.

Having regard to the peculiar facts and circumstances of the case, we are not inclined to issue notice in the present special leave petition, but would request the learned Single Judge to decide and dispose of I.A. Nos. 4196/2024 and 33509/2024 in CS(Comm) No. 159/2024, titled “*F – Hoffmann – LA Roche & AG & Anr. vs. Zydus Lifesciences Limited*”, which are stated to be listed for hearing on 02.12.2024, expeditiously and as soon as possible.

Our attention is also drawn to the order dated 15.11.2024 passed by the Division bench of the High Court in FAO(OS)(Comm) No. 235/2024, titled “*Zydus Lifesciences Limited vs. F.- Hoffmann – LA Roche AG & Anr.*”.

The learned Senior Advocate appearing for the petitioner submits that the learned Single Judge, *vide* order dated 05.11.2024 passed in CS(Comm) No. 159/2024 with IA Nos. 4196/2024 and 33509/2024, revived the interim order dated 09.07.2024.

It is open to the petitioner, Zydus Lifesciences Ltd., to question and challenge the order dated 05.11.2024 before the Division Bench of the High Court by way of an intra-Court appeal.

Recording the aforesaid, the special leave petition is disposed of.

Pending application(s), if any, shall also stand disposed of.”

9. The Supreme Court while disposing of the aforementioned SLP has observed that while it was desisting from interfering with our order of 16 October 2024, IA No. 4196/2024 as well as IA No. 33509/2024, which were pending consideration before the learned Judge in the principal suit, would be considered expeditiously and as soon as possible. The attention of the Supreme Court also appears to have been drawn to the impugned order of 05 November 2024 which had been passed in the interregnum by the learned Single Judge. Insofar as that order is concerned, the Supreme Court reserved the right of the present appellant to impugn the same by way of an intra-court appeal. It is in the aforesaid backdrop that the instant appeal has come to be preferred before us today.



10. As we take note of the impugned order of 05 November 2024, we find that the learned Judge, after noticing our decision of 16 October 2024, had acknowledged that IA 33509/2024 would be liable to be considered afresh. The learned Judge further proceeded to observe that, in the interregnum, the ad interim injunction of 09 July 2024 would continue.

11. Waters cleared got muddled in light of the two separate orders dated 09 October 2024 which the learned Judge had come to pass in the meanwhile and which had formed the subject matter of the two appeals which came to be preferred. As was noticed in the preceding parts of this order, while by one order passed on IA 33509/2024, the ad interim injunction had come to be vacated, by a separate order passed on the same date the learned Judge had continued the operation of that order for a period of two weeks, presumably to enable the plaintiffs to pursue appropriate legal remedies. Ultimately, and when the appeals came to be decided by us on 15 October 2024 and 16 October 2024, we had in unequivocal terms provided for the interim injunction application to be revived and heard afresh. Our intent clearly was that IA 33509/2024 would consequently be liable to be examined afresh and in accordance with law. Once the principal application for interim injunction had come to be dismissed by the learned Judge and that order was ultimately set aside by us in appeal, the same cannot be construed as having resulted in a revival or continuance of the original injunction.

12. In light of the peculiar situation which arose, pursuant to the conflicting and irreconcilable orders passed on 09 October 2024, the learned Judge, in our considered opinion, would have been well



advised to hear parties on IA 33509/2024 afresh before proceeding to extend the validity of that order and which had not been provisioned in explicit terms post 18 July 2024. The order of 09 July 2024 clearly did not exist to be extended.

13. Of equal significance are the following facts. We bear in mind the undisputed position which emerges from the record, namely, of the order of 09 July 2024 being prescribed to operate till the next date of hearing. This was, therefore, not a case where an injunction was to operate during the pendency of proceedings and till such time as it would be vacated by way of a specific direction or observation appearing in any of the orders that may have been framed and passed in the interim.

14. While the respondents would contend that the said order continued once the order of vacation had been set aside by us, we find ourselves unable to accept that argument in light of the state of confusion which came to prevail in light of the conflicting orders passed in the main suit.

15. We also bear in mind the legal position with respect to interim orders which are ordained to operate only up to particular date. Mr. Dave, learned senior counsel appearing in support of the appeal, has aptly drawn our attention to the judgments of the Supreme Court in this respect in **Ashok Kumar and Others v. State of Haryana and Another**⁶, **N. Rathinasabapathy and Others v. K.S. Palaniappa Kandar and Others**⁷ and **Arjan Singh v. Punit Ahluwalia and**

⁶ (2007) 3 SCC 470

⁷ (1996) 7 SCC 205



Others⁸.

16. In *Ashok Kumar*, the Supreme Court set aside the decision of the Division Bench of the Punjab and Haryana High Court which held that stay orders cannot be considered to be operative only up to the date when a case was adjourned, albeit in the context of Section 6 of the Land Acquisition Act, 1894 and observed as follows:

“11. The short question which arises for consideration in this appeal is as to whether the order of ad interim injunction granted by the learned Civil Judge, Senior Division, Panipat, was operative till 9-9-1998 or 19-8-2000. We have noticed hereinbefore the nature of the orders passed by the learned Civil Judge. Although in its order dated 30-8-1997, the learned Civil Judge, used the term "in the meantime", which was repeated in its order dated 24-9-1997, but in the subsequent orders beginning from 29-11-1997, the expression used was "till then".

12. The term of the order of the learned Judge, in our opinion, does not leave any manner of doubt whatsoever that the interim order was only extended from time to time. The interim order having been extended till a particular date, the contention raised by the respondents herein that they were under a bona fide belief that the injunction order would continue till it was vacated cannot be accepted.

13. In our considered opinion, the purport of the order passed by the learned Civil Judge, Senior Division, Panipat, in extending the order of injunction is absolutely clear and explicit. It may be true that the date was preponed to 28-7-1998, but from a bare perusal of the order passed by the learned Civil Judge, Senior Division, it is evident that the order of injunction was not extended. Even on the subsequent dates, the order of injunction was not extended. In fact, no order extending the period was passed nor any fresh order of injunction was passed by the learned Civil Judge, Senior Division, subsequent thereto.

14. Proviso (ii) appended to sub-section (1) of Section 6 of the Act clearly debars making of any declaration in respect of any particular land covered by a notification issued under sub-section (1) of Section 4 after the expiry of one year from the date of publication thereof. Explanation (1) appended to the said proviso, however, stipulates that in computing any of the periods referred to in the first proviso, the period during which any action or

⁸ (2008) 8 SCC 348



proceeding to be taken in pursuance of the notification issued under Section 4(1), is stayed by an order of a court, shall be excluded. On a plain reading of the aforementioned provisions, there cannot be any doubt whatsoever that the period which is required to be excluded would be one, during which the action or proceeding taken was subjected to any order of stay passed by a competent court of law.

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19. We, therefore, are of the opinion that the judgment of the High Court cannot be sustained, which is set aside accordingly. The appeal is allowed. In the facts and circumstances, there shall, however, be no order as to costs.”

17. In *Arjan Singh*, the Supreme Court had held thus:

“17. Was the order of injunction operative so as to attract the provisions of Rule 2-A of Order 39 of the Code of Civil Procedure or invoking the inherent jurisdiction of the court under Section 151 thereof? The learned trial Judge opined that it was so because it was for the court to pass an appropriate order thereunder. The High Court, however, differed with the aforementioned finding of the learned trial Judge to hold that no order of injunction was operative. It, furthermore, held that any transaction carried out in violation of the order of the court is void; it would be a nullity. The decision of the High Court is based on the decisions of different High Courts including *Pranakrushna v. Umakanta Panda*, *Phani Bhusan Dey v. Sudhamoyee Roy* and *Harbalas v. State of Haryana*. We agree with the High Court on this issue. If the order of injunction was operative up to a particular date, technically the order of injunction shall not remain operative thereafter. The owner of the land Dr. Bawa and Defendant 2 Sanjeev Sharma, thus, could have entered into the compromise. The effect thereof would be that the said deed of sale was not binding on the appellant. It would be hit by the doctrine of lis pendens, as adumbrated under Section 52 of the Transfer of Property Act. The said deed of sale would not come in the Court's way in passing a decree in favour of the appellant. Its validity or otherwise would not be necessary to be considered as the appellant is not bound thereby. Sanjeev Sharma and consequently Punit Ahluwalia would be deemed to be aware of the pendency of the suit. Even Section 19 of the Specific Relief Act will be attracted.

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22. We, however, do not agree that the appellant cannot be made to suffer for violation of the order of the court but as the legal principle stated in the judgment of the learned trial Judge in that



behalf is not correct, the same would not apply in this case. As no order of injunction was operative, the court cannot pass an order of injunction with retrospective effect so as to take away the right of the parties created for the said purpose. To the said effect, the court must make a distinction between an incidental proceeding and a supplemental proceeding. An order of injunction can be passed in terms of the provisions of the supplemental proceedings contained in Section 94 of the Code of Civil Procedure. An express order must be passed while giving effect to the supplemental proceedings which is additional to the incidental power of the court. The distinction is fine but real.

23. For the reasons aforementioned, the impugned judgment is set aside to the aforementioned extent. The appeal is allowed in part. In the facts and circumstances of the case, Respondents 2 and 3 must bear the costs of the appellant. Counsel's fee assessed at Rs 50,000 (Rupees fifty thousand only).”

18. Similarly and in *N. Rathinasabapathy*, the Supreme Court overturned the decision of the High Court of Madras holding the appellants therein guilty of contempt for proceeding with construction activities since the injunction granted by the High Court was not extended and held as follows:-

“3. With respect to the High Court we find it difficult to comprehend how the blame could be laid at the doors of the appellants. There is no doubt that the operation of the injunction was limited to three weeks. It is nobody's case that it was extended thereafter. The appellants showed respect to the order of the Court by stopping the construction as soon as the injunction order was received. After the expiry of three weeks when they did not receive any order continuing the injunction, they proceeded with the construction. As such it is difficult to understand how it can be said that the appellants had shown disrespect to the order passed by the Court. On the contrary, they showed respect by not proceeding with the construction as soon as the injunction order was received and they continued with the construction only after its period expired. Therefore, the High Court was wrong in stating that the appellants committed gross violation of the spirit and intention of the order "as if it had been effective only for a period of three weeks from the date of pronouncement of the order". There is no question of the order being in existence after the expiry of three weeks. The expression 'as if' used in the abstracted part of the order is totally unwarranted because indisputably, it was effective only for a period of three weeks. There was, therefore, absolutely no violation of the



Court's order. We, therefore, fail to understand how the appellants can be hauled up for contempt under Section 12 of the Contempt of Courts Act. We are clearly of the opinion that there was no disrespect intended or shown and there was no contempt whatsoever. The impugned order of the High Court cannot, therefore, be allowed to stand.

4. In the result, we allow this appeal, set aside the impugned order of the High Court dated 2-5-1986 and discharge the notice for contempt. No costs.”

19. The reliance placed by Mr. Sethi, learned senior counsel, on the decision of the Supreme Court in **High Court Bar Association, Allahabad v. State of Uttar Pradesh and Others**⁹ is clearly misplaced since that was a judgment dealing with the correctness of its decision which had ordained that interim orders would be deemed to have been discharged without reference to court and by mere efflux of time. That is clearly not the position which obtains here.

20. In our considered opinion, not only had the order of 09 July 2024 expired on the relevant date in light of the incongruent position which was struck by the learned Single Judge with respect to that order, it would have been prudent for the Court to have considered whether that order continued to subsist and could have been extended. We also bear in consideration our directions for the interim injunction application being considered afresh. The record bears out that the original order of 09 July 2024 was never extended after 18 July 2024 even though it was listed and called on various dates thereafter.

21. Accordingly, and for all the aforesaid reasons, we find ourselves unable to sustain the impugned order dated 05 November 2024.

22. This appeal shall consequently stand allowed. The order dated



05 November 2024, insofar as it purports to extend the ad interim injunction dated 09 July 2024, is set aside. IA No. 33509/2024 shall consequently be taken up for hearing afresh. We request the learned Single Judge to bear in mind the observations rendered by the Supreme Court while disposing of the SLP of the need for the said application being considered expeditiously and disposed of as soon as possible.

23. The appeal shall stand disposed of on the above terms.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 21, 2024/kk

⁹ (2024) 6 SCC 267