



IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 04.06.2025

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

A.Nos.2471 & 2472 of 2025
in C.S.No.282 of 2018

In both Applications:

1. Novartis AG, Lichtstrasse, 35, 4056 Basel, Switzerland, Represented by its power of attorney Mr. Atul Bade.

2. Novartis Healthcare Pvt. Ltd.,
Inspire BKC, G Block, 7th floor, Bandra Kurla Complex main road, Bandra (East), Mumbai-400 051, Represented by its POA Mr.Atul Bade.

... Applicants/Plaintiffs

-vs-

Venkata Narayana Active Ingredients Private Limited,
(Formerly Nutra Specialties Pvt. Ltd.)
Venkata Narayana Towers, III Floor, New No. 60, Old No.35,
Venkata Narayana Road, T. Nagar, Chennai-600 017.
(Amended as per Order dated 23.11.2018 in A.No.8946 of 2018)

.. Respondent/Defendant

Prayer in A.No.2471 of 2025: Application is filed under Order XIV Rule 8 of OS Rules Read With Order XIX Rule 5 of Commercial Courts Act, 2015 to strike off paragraphs 16 to 24 from the proof affidavit of DW1, Mr.Abhaya Kumar Srisrimal dated 21.04.2025.

Prayer in A.No.2472 of 2025: Application is filed under Order XIV Rule 8 of OS Rules Read With Section 151 of C.P.C., to reject the proof affidavit of DW1, Mr.Abhaya Kumar Srisrimal dated 21.04.2025.



WEB COPY

In both Applications:

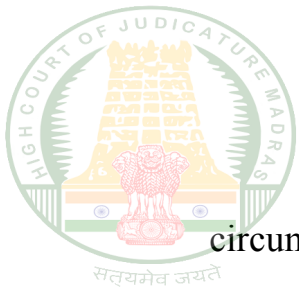
For Applicants/Plaintiffs : Mr.Hemant Singh
for Mr.Arun C.Mohan

For Respondent/Defendant : Mr.T.K.Ramkumar
for M/s.Ram and Rajan Associates

COMMON ORDER

These applications have been filed by the plaintiffs to reject the proof affidavit of D.W.1 and to strike off paragraphs 16 to 24 thereof.

2. By referring to the written statement dated 25.07.2018, learned counsel for the plaintiffs submits that the defendant did not plead either lack of novelty or lack of inventive step. Instead, he submitted that the pleading was limited to default in making disclosures as per Section 8 of the Patents Act, 1970 (the Patents Act) and exclusion under Section 3(d) thereof. Learned counsel proceeded to submit that the defendant endeavoured to file an additional written statement by including therein the contents of paragraphs 16 to 24 of the impugned proof affidavit, but this Court rejected the request for filing such additional written statement. In these



WEB COPY

circumstances, learned counsel submits that the defendant should not be permitted to lead evidence, which is beyond the scope of pleadings. In support of this contention, learned counsel relies on the following judgments of the Supreme Court:

(i) *Srinivas Raghavendraro Desai (dead) by legal representatives v. V.Kumar Vamanarao @ Alok and others, Civil Appeal Nos.7293-7294 of 2010;*

(ii) *Ponnayal Alias Lakshmi v. Karuppannan (Dead) through Legal Representative Sengoda Gounder and another, (2019) 11 SCC 800.*

3. In response, learned counsel for the defendant submits that the additional written statement was not permitted to be filed merely on the ground of delay in filing the same. He further submits that this Court permitted the defendant to file the documents listed at paragraph 10 of the order dated 19.04.2021 and, therefore, it is necessary to depose in relation to those documents. Learned counsel also submits that the invalidity of the patent was pleaded in the written statement and that it is permissible to lead evidence with regard to invalidity on grounds of novelty and lack of



inventive step.

WEB COPY

4. In paragraph 8 of the written statement, the defendant pleaded as under:

“8. The averments in para 6.6 are denied. The patent itself ought not to have been granted for the API alone. There has been misrepresentation before the Patent Office for grant of the same, disclosures under S.8 of the Patents Act has not been followed and most importantly there has been an admission that the patent itself is for a metabolite. It is respectfully submitted that metabolites are not protected under the Indian Patent Laws and patenting of metabolite is strictly prohibited under S.3 (d) of the Patents Act, 1970.”

On perusal of paragraph 8 and the other paragraphs of the written statement, it is noticeable that failure to make disclosure in accordance with the Section 8 of the Patents Act and exclusion from patent protection under Section 3(d) thereof have been pleaded. On examining these pleadings, issues were framed on 19.01.2024 and thereafter recast on 05.02.2025. On examining the recast issues, it is noticeable that issues were not framed with regard to invalidity on the grounds of lack of novelty or lack of inventive step.

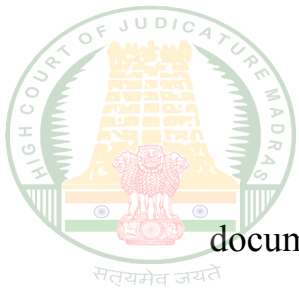


WEB COPY

5. In a pleading, a party is required to set out the facts necessary to establish the claim or the defence, as the case may be, by later adducing evidence for such purpose at trial. The object and purpose is to put the counter party concerned on notice about the case being set up by the party and to enable the Court to frame appropriate issues based on issues arising from such pleadings. While it is not necessary to plead evidence or the law, the pleading is required to function as a frame or skeleton on the basis of which parties lead evidence within the scope thereof.

6. In the case at hand, on comparing the averments in the written statement with paragraphs 16 to 24 of the proof affidavit of D.W.1, it follows that D.W.1's deposition goes beyond the pleadings in the written statement. Therefore, the statements made in paragraphs 16 to 24 of the proof affidavit are liable to be eschewed.

7. The above mentioned paragraphs contain references to documents, which the defendant was permitted to file under earlier order dated 19.04.2021. Therefore, it is necessary for D.W.1 to draw reference to those



WEB COPY

documents. For such purpose, the defendant is permitted to file a fresh proof affidavit retaining paragraphs 1 to 15 of proof affidavit dated 21.04.2025.

Paragraphs 16 to 24 thereof shall be replaced by one paragraph describing the documents referred to in earlier paragraphs 16 to 24 briefly for the limited purpose of identification and requesting that the same be marked as exhibits.

8. These applications are disposed of on these terms without any order as to costs. The plaintiffs' right to raise objections, *inter alia*, on the grounds of admissibility, relevance and proof in respect of documents referred to in such modified proof affidavit is reserved.

04.06.2025

(2/3)

kj

SENTHILKUMAR RAMAMOORTHY,J.

Kj

6/7



WEB COPY

A.Nos.2471 & 2472 of 2025
in C.S.No.282 of 2018

04.06.2025
(2/3)