



\$~11(Original Side)

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

+ **CS(COMM) 611/2019, I.A. 2193/2021**

FMC CORPORATION & ANR. Plaintiffs

Through: **Ms. Udit M. Patro, Adv.**

versus

NATCO PHARMA LIMITED Defendant

Through: **Mr. J. Sai Deepak with Mr. G. Nataraj, Mr. Avinash K. Sharma and Mr. Ankur Vyas, Advs.**

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

% **12.02.2021**

I.A. 2193/2021 (under Section 151 & 152 of CPC- for correction/clarification of order dated 08th February, 2021)

1. This application seeks a modification in the order dated 8th February, 2021, passed by this court in I.A. 2194/2021, which was yet to be numbered till that date.

2. The order reads thus:

I.A. /2021 (to be numbered)

1. This matter was mentioned in the Court by Mr. Guru Krishnakumar, learned Senior Counsel on behalf of the plaintiff expressing an apprehension that the defendant has obtained the necessary approval, as would enable the defendant to launch its allegedly infringing product in the market, thereby rendering the prayer for interim relief



infructuous.

2. Mr. Natraj, learned Counsel for the defendant submits that, as of now, a meeting of the Central Insecticides Board and Registration Committee alone has been held, and the requisite approval, on the basis whereof the defendant would launch its product in the market is yet to be obtained. He also undertakes, on behalf of his client, that, till the next date of hearing, his client would not launch his product in the market.

3. In view thereof, issue notice in this application. Mr. Natraj accepts notice. Let a response to the application be filed before the next date of hearing with advance copy to learned Counsel for the plaintiffs.

4. Re-notify on 15th February, 2021.

5. Mr. Natraj submits that the undertaking given by him today would subsist only till the arguments on the application which are part-heard, are concluded and a decision taken thereon. The submission is noted.

3. Mr. Jai Sai Deepak, learned counsel for the defendant submits that the undertaking recorded on 8th February, 2021 was essentially a fall out of the original undertaking given before this court on 24th February, 2020. Thereafter, he submits, there have been many supervening events, including grant of approval by the Central Insecticides Board and Registration Committee (CIBRC) to the registration of the defendants application for manufacture of CTPR. He also submits that the genus patent, held by the plaintiff, IN 204978, is expiring on 20th March, 2021, and that, therefore, his client would be entitled to launch with effect from 21st March, 2021, under Section 53(4) of the Patents Act, 1970.

4. In view thereof, he submits that, as the plaintiff is in rejoinder, the
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undertaking given by him may be modified to the extent that his client would not launch the product in the market till 21st March, 2021.

5. He also impresses on the court, the fact that, as the plaintiff is in rejoinder and the matter is listed on 15th February, 2021, there is sufficient time for the plaintiff to conclude its arguments and for the court to take a decision on the stay application of the plaintiff.

6. Ordinarily, this court would expect that, when an application under Order XXXIX Rules 1& 2 of the CPC is in the process of being heard, the *status quo* is not disturbed till the application is decided.

7. Nevertheless, *qua* the submission of Mr. Jai Sai Deepak that the undertaking not to launch the product may be modified to the extent that the defendant would not launch the product till 21st March, 2021, let notice be issued to the plaintiff, so that the plaintiff could take a call thereon, including, *inter alia*, by expediting its arguments in rejoinder, so that the matter could be decided as expeditiously as possible.

8. Ms. Udit M. Patro, learned counsel appearing for the plaintiff, accepts notice.

9. Re-notify this application along with the main matter on 15th February, 2021.

C.HARI SHANKAR, J

FEBRUARY 12, 2021

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