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

+ **CS(COMM) 92/2017**

VEE EXCEL DRUGS & PHARMACEUTICALS (P) LTD...Plaintiff
Through: Mr. Pankaj Kumar, Adv.

Versus

HAB PHARMACEUTICALS & RESEARCH LTD. Defendant
Through: Mr. Archana Sahadeva, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **03.07.2019**

IA No.11812/2018 (of defendant u/O XI R-1(10) CPC for filing additional documents)

1. The applicant/defendant, post closure of evidence of the plaintiff and before commencement of its own evidence, seeks to file additional documents.
2. The counsel for the applicant/defendant has argued that it is *inter alia* the defence of the applicant/defendant to this suit that the applicant/defendant was using the mark since prior to adoption of the mark by the plaintiff, as a licensee of one Aurochem Pharmaceuticals (I) Private Limited as well as in its own rights. The counsel for the applicant/defendant, on enquiry has drawn attention to Issue No.(vi) framed (on 29th September, 2010) on this aspect in the suit and on further enquiry states that the word "plaintiff" in the said issue is obviously a typographical mistake as the onus of the issue is also on the defendant.

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3. The counsel for the applicant/defendant further states that Aurochem Pharmaceutical (I) Private Limited, in the year 2013 assigned the mark in favour of the defendant which rights had been assigned to Aurochem by Vega Pharmaceuticals and at the time of assignment also handed over to the applicant/defendant documents in its power and possession pertaining to the said mark and which documents also included the documents of earlier use of the said mark by Vega Pharmaceuticals Limited. It is stated that the applicant/defendant prior to 2013 was not privy to the said documents. It is admitted that though all the documents now sought to be filed came in power and possession of the applicant/defendant as far back as in 2013, but remained to be filed.

4. I may mention that issues have already been framed in the suit regarding use of the mark.

5. I have enquired from the counsel for the plaintiff, the prejudice if any suffered by the plaintiff in leading its evidence since the year 2013, from non-disclosure by the applicant/defendant of the said documents.

6. The counsel for the plaintiff is unable to tell any.

7. In the circumstances, the documents are relevant and subsequent to the stage of framing of issues. However there is delay in filing thereof from 2013 onwards. For the said delay, the applicant/defendant is burdened with costs of Rs.25,000/- payable to the plaintiff.

8. The application is allowed and disposed of.

CS(COMM) 92/2017 & IAs No.10181/2009 (u/O XXXIX R-1&2 CPC) & 11813/2018 (for exemption from filing English Translation of documents)

9. The document already filed are taken on record and the defendant

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shall be entitled to prove the same in accordance with law.

10. The counsel for the plaintiff, on enquiry, whether wants to file any document in response to the documents of the defendant permitted to be taken on record, is again unable to tell any. In these circumstances, the plaintiff can only be granted liberty to apply.

11. Recording of evidence before the Joint Registrar to continue.

12. List before the Joint Registrar on 2nd August, 2019 for scheduling further date/s for recording of evidence.

13. The defendant to file affidavits by way of examination-in-chief of its witnesses before that date.

RAJIV SAHAI ENDLAW, J.

JULY 03, 2019

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