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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 726/2018, IA No.3497/2018 (u/O XXXIX R-1&2 CPC)
& IA No.3498/2018 (u/O XXVI R-9 & u/O XXXIX R-7 CPC)
MACLEODS PHARMACEUTICALS LIMITED Plaintiff

Through: Mr. Jayant Mehta, Mrs. Archana
Sachadeva, Mr. Nikhil Lall, Mr.
Adithya Jayaraj & Mr. Rahul
Kukreja, Advs.

Versus

RIDLEY LIFE SCIENCE PVT. LTD. Defendant

Through: Mr. Satish Kumar Tripathi & Mr.
Amit Kumar Dubey, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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24.04.2018

1. This order is in continuation of the earlier orders dated 13th March, 2018 and 16th March, 2018.
2. The counsel for the defendant states that the defendant has filed an affidavit in compliance of para no.5 of the order dated 16th March, 2018 and because the affidavit had some defects / deficiencies, another affidavit was filed and the Factory Manager and Director of the defendant are present in Court.
3. The counsel for the plaintiff has drawn attention to the affidavit dated 19th March, 2018 of Mr. Ram Kumar Gautam, Factory Manager of the defendant. It is pointed out i) that the contents of paras no.2 and 3 thereof are 'on instructions' but does not disclose from whom and the statements made therein do not thus bind the defendant; ii) that in paras no.4 and 5 of the affidavit, the batch numbers given of the first and last batch manufactured



do not tally; iii) that the intimation stated in para no.3 of the affidavit to have been sent to all the wholesalers / stockists, has not been disclosed; iv) that in para no.7 of the affidavit, the selling price of “Pantaderm+” cream is shown as Rs.7.50 per tube; v) that in para no.8 of the affidavit an unequivocal statement is made of the defendant having not manufactured or sold any product with the name / mark “Pantaderm”.

4. The counsel for the plaintiff next contends that the plaintiff, after the last date, purchased one of the products of the defendant available in the market and the batch number whereof does not tally with the batch numbers given in paras no.4 and 5 of the affidavit; that the price given of the said product at which the plaintiff purchased the same is Rs.75/- and not Rs.7.50 as is falsely stated in the affidavit. The extract taken yesterday from the website of the defendant is handed over to show that the defendant in its product range is showing the product under the mark / name “Pantaderm” falsifying the statement in para no.8 of the affidavit. It is further contended that the subsequent affidavit dated 9th April, 2018 of Mr. Rakesh Bansal, Director of the defendant is also on the same lines.

5. The counsel for the defendant in response states that since Mr. Rajesh Bansal another Director of defendant as well as Mr. Ram Kumar Gautam, Factory Manager of the defendant are present in the Court, their statements in the correct form can be recorded. With respect to the price, it is stated that the price of Rs.75/- shown is the retail price whereas the price of Rs.7.50 stated in the affidavit is the price at which the defendant sells to its wholesalers / stockists. With respect to the website of the defendant, it is stated that the defendant manufactured the



product “Pantaderm” for a period of one year only but the product has remained on the website inadvertently and will be removed.

6. The counsel for the defendant on enquiry states that no written communications in terms of para no.3 of the affidavit of Mr. Ram Kumar Gautam, Factory Manager of the defendant was sent to the wholesalers / stockists of the defendant.

7. The counsel for the plaintiff states that the defendant has made it a practice to indulge in infringement of trade marks and patents and whenever such infringement is detected, to appear before the Court and to suffer an injunction without becoming liable for damages.

8. A number of cases against the defendant have come up before this Bench also and this Bench is familiar with the aforesaid practice of the defendant.

9. The manner in which the defendant has given particulars of its batch numbers and of its sale will also make it absolutely impossible to enforce even a decree for permanent injunction against the defendant to which the defendant has consented inasmuch as the product of the defendant will continue to remain in the market till the year 2020 which is stated to be the expiry date. Moreover, it is quite evident that Mr. Rakesh Bansal, Director and Mr. Ram Kumar Gautam, Factory Manager of the defendant have sworn false affidavit and *prima facie* intentionally to mislead the Court and to wriggle out from the claim for damages. The explanation given by the counsel for the defendant for the falsities having been done in the affidavits is not found to be satisfactory. Mr. Rakesh Bansal, Director and Mr. Ram Kumar Gautam, Factory Manager of the defendant do not appear to



understand the sanctity of an affidavit to be submitted to the Court and it is in the circumstances deemed necessary that such actions of Mr. Rakesh Bansal, Director and Mr. Ram Kumar Gautam, Factory Manager of the defendant should not go without being dealt with by the Court.

10. However, before proceeding further, it is deemed appropriate to issue notice to show cause to Mr. Rakesh Bansal, Director and Mr. Ram Kumar Gautam, Factory Manager of the defendant as to why they should not be proceeded against for filing a false affidavit and for misleading the Court, by prosecution and / or by being proceeded against for criminal contempt of Court inasmuch as the aforesaid acts amount to obstruction with the administration of law.

11. Notice is served on Mr. Rajesh Bansal, Director and Mr. Ram Kumar Gautam, Factory Manager of the defendant personally present in the Court and reply thereto be filed within 10 days.

12. Mr. Rajesh Bansal, also states that besides himself, his brother Mr. Rakesh Bansal is only other Director of the defendant.

13. In the circumstances to verify further truth about the affairs of the defendants, it is also deemed appropriate to appoint a Court Commissioner.

14. Accordingly, Mr. Ramkrishna Veerendra, Advocate, Mobile No.8600599433 is appointed as the Court Commissioner to visit the premises of the defendant at D-1651, DSIDC Industrial Complex, Narela, Delhi today itself and to with the assistance of the representative/s of the plaintiff report on the activities being carried on therein i.e. the drugs / medicines being manufactured / produced, the packaging material, the batch



numbers of the said goods and to inspect all other records and goods and report thereon.

15. The commission proceedings be videographed.

16. The Local Commissioner shall also be entitled to make copies of all the records as may be deemed necessary and to submit the same along with his report.

17. Mr. Rajesh Bansal, Director and Mr. Ram Kumar Gautam, Factory Manager of the defendant are directed to ensure that the Commission is peacefully executed and no disturbance is caused in the execution of the Commission and the Court Commissioner is given access to all the portions / records and goods in the premises.

18. The fee of the Court Commissioner is fixed at Rs.1 lac besides out of pocket expenses.

19. The report of the Court Commissioner be submitted within one weeks with advance copy to both counsels.

20. List on 18th May, 2018.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J

APRIL 24, 2018

‘gsr’..

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