

M/S. THE HIMALAYA DRUG COMPANY

.....APPELLANT

VERSUS

M/S. GUFIC LTD. & ANR.

.....RESPONDENT

O R D E R

Despite orders passed by this Court on October 20, 2010 and February 23, 2011, the suit before the trial court has not concluded so far. On the contrary, some other developments have taken place.

The appellant (defendant before the trial court) moved an application for amendment of the written statement, which was allowed by the trial court. In response, respondent No.1 (plaintiff before the trial court) made an application for some corresponding amendments in the plaint. The trial court rejected the request and against the order of the trial court, respondent No.1 moved the High Court. The High Court is reported to have allowed the prayer for amendment of the plaint and the amendments are in the process.

Apart from this, respondent No.1 (plaintiff before the trial court) has now moved a petition under Section 111 of the Trade and Merchandise Act, 1958 praying for stay of the suit proceedings on the ground that it has moved an application for rectification before the Intellectual Property Appellate Board (IPAB) on March 17, 2011. The aforesaid petition was filed after this Court, on a joint prayer made by both the sides,

passed
.....2/-

: 2 :

the order dated February 23, 2011 extending the time earlier granted to the trial court to dispose of the suit, by three months.

It, thus, appears that the respondents are taking a contrary stand. Having made an application for stay of the proceedings in the suit, they cannot, at the same time, enjoy the benefit of the interim order of injunction passed earlier by the trial court and affirmed by the High Court against the defendant - appellant.

We, accordingly, set aside the order of injunction dated January 10, 2003 by the trial court and affirmed by the High Court by order dated January 29, 2004.

In the result, the Civil Appeal is allowed but with no order as to costs.

.....J
(AFTAB ALAM)

.....J
(R.M. LODHA)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5830 OF 2004

M/S. THE HIMALAYA DRUG COMPANY

Appellant (s)

VERSUS

M/S. GUFIC LTD. & ANR.

Respondent(s)

(With appln(s) for permission to submit addl. document, directions
for listing of the civil appeal and prayer for interim relief)

Date: 12/07/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM
HON'BLE MR. JUSTICE R.M. LODHA

For Appellant(s)

Mr. Pravin H. Parekh, Sr. Adv.
Mr. Lalit Chauhan, Adv.
Mr. Nitin Thukral, Adv.
Ms. Pallavi Sharma, Adv.
Mr. Vishal Prasad Adv.
Ms. Suman Yadav, Adv.
for M/. Parekh & Co.

For Respondent(s)

Mr. Rohan Thawani, Adv.
for Ms. Vandana Sehgal, Adv.

UPON hearing counsel the Court made the following
O R D E R

The civil appeal is allowed but with no order as
to costs.

(N.S.K. Kamesh)
Court Master

(S.S.R. Krishna)
Court Master

(signed order is placed on the file)