

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2114-2115 OF 1999

INDO-PHARMA PHARMACEUTICAL WORKS LTD.

APPELLANT

VERSUS

CITADEL FINE PHARMACEUTICALS LTD.

RESPONDENT

WITH

C.A.No.1502/2006

(@ S.L.P.(C) NO.7317 OF 2003)

O R D E R

C.A.Nos. 2114-2115/1999

The appellant claims that he is a holder of a registered trade mark with respect to an allopathic drug named 'ENERJEX'. The respondent had started manufacturing an

ayurvedic drug brand named as 'ENERJASE'. The appellant filed a suit for or injunction

against the respondent to restrain it from manufacturing the drug under the mark

'ENERJASE'. In the suit an ex-parte interim injunction was passed by the learned Single

Judge of the High Court on 08.01.1997 as prayed by the plaintiff. This interim injunction

was, however, on final hearing of the injunction application vacated by the learned Single Judge. The appellant filed an appeal against the said order before the Division Bench of the High Court which met the same fate, i.e., the appeal was dismissed. Against the order

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of the Division Bench, the present appeal has been filed in this Court. Since the

controversy in the appeal is only regarding grant or non-grant of temporary injunction

during the pendency of suit, the suit should, in the normal course, have been proceeding in

the meanwhile. However, we are informed that because of pendency of this appeal, no

progress is being made in the main suit. In the present appeal while granting leave this

Court on 05.04.1999 stayed judgments of the Single Judge on the injunction issue as well

as that of the Division Bench of the High Court thereby restoring the interim ex-parte

injunction granted by the Single Judge in favour of the plaintiff (the appellant herein).

Thus during the pendency of these appeals there has been an injunction restraining the

respondent from manufacturing the drug under the name 'ENERJASE'. The learned

counsel appearing for the respondent submits that the respondent had stopped

manufacturing the drug 'ENERJASE' since then. Now the parties counsel agree that this

appeal be disposed of by directing the Single Judge of the High Court to proceed with the

suit and decide the same on merits as expeditiously as possible. It is further agreed that till

the decision of the suit by the Single Judge, the injunction already in force will continue,

i.e., the order of ex-parte injunction granted in favour of the plaintiff

f-appellant by the

learned Single Judge will continue to be in force till the disposal of the suit. Accordingly, these appeals are disposed of with the direction to the learned Single Judge of the High Court to proceed with the trial of the suit on merits. The interim injunction order passed on 08.01.1997 will continue till the disposal of the suit. It is made clear that we have not

expressed any opinion on the merits of the controversy involved in this case.

C.A.No.1502/2006 (@ SLP(C) No.7317/2003)

Leave granted.

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The respondent No.1 herein filed a suit in the District Court at Delhi bearing

Suit No.304/1999 on 03.05.1999 against the appellant herein for seeking permanent

injunction restraining the appellant from in any way using the trade mark 'ENERGIC -31'

and or 'ENERGIC-31 PLUS' with respect to the ayurvedic medicine. The respondent

claimed to be a prior user of the said trade name having a registered trade mark with

respect to the said drug. The said suit was dismissed by the trial court vide its judgment

dt.09.03.2000. The respondent No.1 filed an appeal against the judgment of the trial court

which was allowed by a Division Bench of the High Court and the High Court remanded

the matter for fresh disposal of the suit on merits by the trial court by the impugned

judgment dt.20.01.2003. The present appeal has been filed against the said judgment of

the High Court. As a result of the pendency of the present appeal, the proceedings in the

suit pending before the trial court have not made any progress. In the facts and

circumstances of the case, we consider it appropriate that the trial court be directed to try and decide the suit pending before it on merit as expeditiously as possible. Accordingly

this appeal is disposed of with the direction to the trial court to proceed with the suit

bearing Suit No.304/1999 and decide the same on merits as expeditiously as possible. It

is made clear that we have not expressed any opinion on the merits of this case while

passing of this Order.

.....J.

ARUN KUMAR)

(

.....J.

R.V. RAVEENDRAN)

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NEW DELHI;

March 2, 2006.

ITEM NO.106

COURT NO.10

SECTION XII

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). 2114-2115 OF 1999

INDO-PHARMA PHARMACEUTICAL WORKS LTD.

Appellant (s)

VERSUS

CITADEL FINE PHARMACEUTICALS LTD.

Respondent(s)

(With office report)

WITH SLP(C) NO. 7317 of 2003

(With prayer for interim relief and office report)

Date: 02/03/2006 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN KUMAR

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Appellant(s)

Mr. Bhargava V. Desai, Adv.

Ms. Sheenam Parwanda, Adv.

Ms. Nupur Kanungo, Adv.

Mr. Rahul Gupta, Adv.

Mr. Amit Yadav, Adv.

Mr. Sanjay Visen, Adv.

Mr. Manoj Kumar Mishra, Adv.

Mr. Kamalendra Mishra, Adv.

For Respondent(s)

Mr. V. Prabhakar, Adv.

Mr. Asok K. Sadhu Khan, Adv.

Mrs. Revathy Raghavan, Adv.

Mr. Ramjee Prasad, Adv.

Mr. V. K. Shukla, Adv.

Mr. A. K. Tripathi, Adv.

Mr. K. K. Mohan

UPON hearing counsel the Court made the following

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O R D E R

C.A.No.2114-2115/1999

The appeals are disposed of in terms of the signed order.

C.A.No...../2006 (@ SLP(C) No.7317/2003)

Leave granted.

The appeal is disposed of in terms of the signed order.

(Satish K. Yadav)

Court Master

(Phoolan Wati Arora)

Court Master

(Signed order is placed on the file)