

(2020) 10 DEL CK 0185

In the Delhi High Court

Case No : Civil Suit (COMM) No. 702 Of 2019, Miscellaneous Application No. 9761 Of 2020

Cadila Healthcare Limited & Anr

APPELLANT

Vs

Pharma Concepts & Anr

RESPONDENT

Date of Decision : 22-10-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 23 Rule 3

Citation : (2020) 10 DEL CK 0185

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Luv Virmani, Lakshay Kaushik, Naman Joshi, Arjit Benjamin

Final Decision : Disposed Of

Judgement

C. Hari Shankar, J

CS(COMM) 702/2019 & I.A. 9761/2020

1. I.A. 9761/2020, under Order XXIII Rule 3 of the Code of Civil Procedure, 1908, preferred jointly by the plaintiffs and the defendants, and signed

and attested by the clients as well as learned Counsel, prays that the present suit be disposed of, as the dispute between the parties has been settled.

The terms of settlement are set out in para 3 of the application, which is reproduced, for ready reference, thus:

â??3. During the pendency of the present suit, the Plaintiffs and Defendants have jointly agreed to amicably resolve their dispute on the following

terms and conditions:

a. The Plaintiffs and the Defendants hereby agree that the present proceedings can be disposed of in accordance with the terms of settlement

contained herein;

b. The Defendants admit and acknowledge the absolute proprietary and common law rights of the Plaintiffs in the trade mark 'PANTODAC' and its

variants. The Defendants also acknowledge the priority in adoption, priority in usage in the trade, validity and subsistence of the trademark

registrations in favour of the Plaintiffs;

c. The Defendants undertake not to object to or challenge the Plaintiffs' rights and use or registration of the mark 'PANTODAC' in any manner

whatsoever;

d. The Defendants, jointly and severally undertake not to use in any manner whatsoever, the impugned mark 'PANTADOC';

e. The Defendants, jointly and severally undertake not to use in any manner whatsoever, the Plaintiffs trade mark 'PANTODAC' and/or any

mark/label that is deceptively similar thereto or that amounts to infringement of the Plaintiffs' rights therein;

f. The Defendants, jointly and severally undertake not to apply for the registration of the mark PANTODAC or any mark/label similar thereto before

the Trademark Registry;

g. The Defendants agree, jointly and severally, that they will has taken down/ removed their existing stock bearing the mark PANTADOC, signboards,

brochures, pamphlets, leaflets, literatures (both offline and online), packing materials, promotional material containing the impugned mark

PANTADOC and/or any mark deceptively similar thereto and destroy the same within a period of two weeks from the signing of the present

application ;

h. The Defendants undertake to recall all the stock sold by them bearing the mark 'PANTADOC' within a period of two weeks from the signing of

the present application;

i. The Defendant No. 1 has paid token costs of Rs. 25,000/- to the Plaintiffs, vide D.D. 675062 no. dated 15.10.2020.

j. The Defendant No. 2 has paid the costs incurred by it in the present litigation, which is to the tune of Rs. 5,00,000/-, vide cheque no. 274538 dated

16.10.2020.

k. The Defendants acknowledge and agree that any breach of this present

agreement would result in irreparable harm to the Plaintiffs. Accordingly, the Defendants agree that if there is any breach by the Defendants in any terms of the present agreement, the Plaintiff shall be entitled to injunctive relief along with damages in accordance with law;

1. In lieu of the above, the Plaintiffs have agreed to give their claim to damages against the Defendants.â??

2. Mr. Naman Joshi, learned Counsel for the defendants also submits that a cheque and a demand draft, towards the amount payable to the plaintiffs

as per the terms of settlement, have been handed over on 19th October, 2020. Mr. Virmani, learned Counsel for the plaintiffs, acknowledges this fact.

3. As the dispute has been settled between the parties, nothing survives for adjudication. The suit is therefore disposed of and decreed in terms of the settlement arrived at between the parties, the terms of which already stand reproduced hereinabove.

4. The parties shall remain bound by the aforesaid terms of settlement.

5. In view thereof, the suit stands disposed of as above.

6. The Registry is directed to draw up a decree sheet accordingly.

7. The application is allowed.