

(2022) 12 DEL CK 0047

In the Delhi High Court

Case No : Civil Suit (COMM) No. 681 Of 2021

Novartis AG & Anr

APPELLANT

Vs

Zydus Healthcare Limited & Anr

RESPONDENT

Date of Decision : 12-12-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 129, Order 8 Rule 1, Order 6 Rule 2, Order 8 Rule 10, Order 7 Rule 11, Order 7 Rule 11(a), Order 7 Rule 14, Order 7 Rule 14(1)
High Court of Delhi Rules Governing Patent Suits, 2022 — Rule 2(e), 3A, 3(A)(ix), 3(A)(x), 4A, 4(A)(iv), 4(A)(v), 4(A)(vi), 4(A)(vii)
Patents Act, 1970 — Section 48
Consumer Protection Act, 1986 — Section 13(2)

Citation : (2022) 12 DEL CK 0047

Hon'ble Judges : C.Hari Shankar, J

Bench : Single Bench

Advocate : Hemant Singh, Siddhant Sharma, C.M. Lall, Vrinda Pathak, Vikram Singh Dalai

Final Decision : Dismissed

Judgement

C.Hari Shankar, J

IA 6051/2022 in CS(COMM) 681/2021

1. I proceed to dispose of IA 6051/2022, filed by the defendants Zydus Healthcare Ltd. and Cadila Healthcare Ltd. under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), whereby the defendants seek rejection of the plaint in CS (Comm) 681/2021, instituted by Novartis AG and Novartis Healthcare Pvt. Ltd..

Facts

2. Novartis asserts Indian Patent IN 229051, titled "Pharmaceutical Compositions comprising Valsartan and NEP inhibitors".

3. The suit patent, it is asserted, consists of a combination of Valsartan and

Sacubitril, which is novel and inventive in nature, and treats cardiovascular diseases. The plaintiff asserts that administration of the combination claimed in the suit patent has greater therapeutic effect than the administration of Valsartan or the administration of a vasodilator or NEP (Neutral Endopeptidase) inhibitors alone. Sacubitril is a NEP and Valsartan is a vasodilator. The “unexpected and surprising synergistic antihypertensive effect” of the combination of Sacubitril and Valsartan is asserted as being novel, non-obvious and inventive.

4. It was in these circumstances, asserts the plaintiff, that IN 229051 was granted to Novartis, with no sustainable opposition either at pre-grant or post-grant stage. Post the grant of the suit patent, Torrent Pharmaceutical Ltd. filed a revocation petition before the learned Intellectual Property Appellate Board (IPAB) which was withdrawn. The suit patent IN 229051 is, therefore, valid and subsisting. It is due to expire on 16th January 2023.

5. The suit alleges that Zydus applied to the Registrar of Trade Marks for registering the trademark “ARNX” on “proposed to be used” basis. The mark ARNX was described as covering “medicinal, pharmaceutical and veterinary preparations for medical purpose, for medical use and chemical preparations of Valsartan and Sacubitril for cardiovascular purposes”. The application was filed by Zydus on 16th August 2021 and was published in the Trademarks Journal on 13th September 2021.

6. The plaintiff further alleges that Zydus and Cadila are companies of the Zydus Cadila Group and that Cadila filed Patent applications IN 2655MUM2015 and IN 201621044625 for obtaining product and process patents in respect of different forms of Valsartan and Sacubitril tablets and of their manufacturing process.

7. Novartis has also relied upon an investigation stated to have been conducted by Strategic Analysis India Pvt. Ltd. (SAI), an independent investigation agency. According to the report dated 14th December 2021 of the said agency, Cadila had obtained a manufacturing license from the Central Drugs Standard Control Organisation (CDSCO), Ahmedabad, for manufacturing a pharmaceutical formulation of Sacubitril and Valsartan, which it intended to launch in December 2021.

8. The application made by Zydus to the Registrar of Trade Marks for registration of the ARNX trade mark, the two patent applications IN 2655MUM2015 and IN 201621044625 filed by Cadila before the patent office and the investigation conducted by SAI, the plaintiff seeks to contend, make out a case of imminent threat to the commercial interests of Novartis by the defendants.

9. In these circumstances, the plaintiff has been filed as a quia timet action, seeking, essentially, a decree of permanent injunction restraining Zydus and Cadila from dealing in any pharmaceutical composition comprising a combination of Sacubitril and Valsartan or any pharmaceutically acceptable salt thereof, as would infringe Novartis’ patent IN 2655MUM2015 and IN 201621044625, apart from rendition of accounts, delivery up, damages and costs.

10. Zydus and Cadila have filed their joint written statement by way of response to Novartis' suit as well as a counter claim, numbered CC (Comm) 27/2022.

11. Additionally, Zydus and Cadila have filed the present application under Order VII Rule 11 of the CPC, seeking rejection of the plaint instituted by Novartis against them.

12. I have heard, at length, Mr. Chander Lall, learned Senior Counsel for Zydus and Cadila and Mr. Hemant Singh, learned Counsel for Novartis, on the said application.

Rival Contentions

Submissions of Mr Chander Lall, on behalf of the applicant-defendants

13. Mr. Chander Lall submits that, even while stating that it had been filed as a quia timet action, the plaint relied on an investigation report by SAI which alleged that Zydus' representative, when telephonically contacted by the investigator, stated that Zydus had already commenced manufacture of the Sacubitril and Valsartan formulation at Moriya, Ahmedabad. If the defendants had commenced manufacture, submits Mr. Lall, the plaint could not be maintained as a quia timet action. Mr. Lall submits that the filing of the plaint as a quia timet action was, therefore, mala fide, to avoid mapping the defendants' product to Novartis'. The Commercial Courts, 2015 Act read with the High Court of Delhi Rules Governing Patent Suits, 2022 (hereinafter "the Delhi High Court Patent Rules"), he submits, mandatorily required infringement, in patent cases, to be demonstrated by mapping the suit patent with the allegedly infringing patent, which had not been done. As such, by artful drafting, the plaint had created an illusory cause of action. An illusory cause of action, submits Mr. Lall, is as good as no cause of action and renders the plaint liable to be rejected under Order VII Rule 11(a).

14. In order to create an artificial cause of action, submits Mr. Lall, the plaint has resorted to rampant misstatement. For example, he submits that the allegation in the plaint that the defendant had obtained a manufacturing license to manufacture the Sacubitril and Valsartan combination was false, as no such manufacturing license had been obtained by the defendants. Similarly, insofar as the application, by Zydus, to the Registrar of Trade Marks for having the ARNX trade mark registered in its favour in respect of the Valsartan-Sacubitril combination was concerned, Mr. Lall submits that the said application had been made only because the plaintiff and defendants were involved in extensive negotiations to allow the defendant to market Novartis' patented product under the defendant's trade mark. Had these negotiations fructified, submits Mr Lall, the defendant would have become a licensee of Novartis, and a licensee can never be an infringer. The details relating to these negotiations, submits Mr. Lall, have been carefully suppressed in the plaint, while raising a brouhaha about the trademark application filed by Zydus.

15. In order to maintain a quia timet action, Mr. Lall submits that the onus of proof would be on Novartis to show that Zydus/Cadila had an actual intention to launch the allegedly infringing product. A meaningful reading of the plaint, he submits, does not disclose a cause of action which is sufficient to maintain a quia timet claim. He relies, for this purpose, on para 28 of the judgment of S. Muralidhar, J. (as he then was, sitting singly) in *Teva Pharmaceutical Industries v. Natco Pharma Limited* (2014) 212 DLT 321, which sets out the requirement of a quia timet action and reads as under:

"29. The averments in a plaint alleging infringement or apprehended infringement of a process patent would have to be precise. In *Astra Zeneca Canada Inc. v. Novopharm Limited* 2009 FC 1209, the Court referred to the adoption of the device of 'wordsmithing' in pleadings and the possibility of the Court not entertaining pleadings that lacked material facts. It was held that "an action cannot be brought on speculation in the hope that sufficient facts may be gleaned on discovery that will support the allegations made in the pleadings." In *Connaught Laboratories Limited v. Smithkline Beecham Pharma Inc.* (1998) 86 CDR (3d) 36, the Court in Ontario held that a statement of claim initiating a quia timet proceedings alleging patent infringement "must allege a deliberate expressed intention to engage in activity the result of which would raise a strong possibility of infringement; the activity to be engaged in must be alleged to be imminent and the resulting damage to the plaintiff must be alleged to be very substantial if not irreparable; and, finally, the facts pleaded must be cogent, precise and material. It is not sufficient that they be indefinite or speak only of intention or amount to mere speculation."

16. Tested on the anvil of *Teva Pharmaceutical* (2014) 212 DLT 321, Mr. Lall submits that the plaint is devoid of the requisite pleadings/material particulars to show imminent threat to Novartis as a result of launch, by Zydus/Cadila, of the allegedly infringing product.

17. Referring, next, to the two patent applications IN 2655MUM2015 and IN 201621044625, stated to have been filed by Cadila for obtaining product and process patents in respect of the Valsartan-Sacubitril combination, Mr. Lall submits that the Commercial Courts Act read with the Delhi High Court Patent Rules required Novartis, mandatorily, to file the aforesaid applications, which were available in the public domain. Novartis has demurred from doing so, according to him, only so that they would be saved the exercise of mapping the suit patent with the allegedly infringing patents which, if done, would reveal that there was no infringement. He has relied, in this context, on Rule 3(A)(ix) and (x) as well as Rule 2(e) of the Delhi High Court Patent Rules, which, according to him, mandated mapping, in every case, of the suit patent with the alleging infringing patent and did not relax this requirement in the case of quia timet actions. He has also invited attention, in this context, to paras 9 to 12 of the judgment of the High Court of Patna in *Bhagirath Prasad Singh v. Ram Narayan Rai* 6AIR 2010 Patna 189:

3. Content of Pleadings. – (A) Plaintiff The plaintiff in an infringement action shall, to the extent possible, include the following aspects:- (ix) Precise claims versus product (or process) chart mapping or in the case of SEPs, claim chart mapping through standards; (x) Infringement analysis explained with reference to the granted claims in the specification. Details of the allegedly infringing product or process, the manner in which infringement is being alleged including, if available, a description of the defendant's process;

e. 'Infringement brief' Brief to be filed by the Plaintiff, along with the claim construction brief, that compares the elements of each of the claims, and the manner in which the Defendant's product/process infringes the claims relied upon. In the case of Standard Essential Patents (SEPs), the infringement brief shall contain claim charts, mapping the patent claims to the standards, and the manner in which the Defendant infringes the same.

"9. On the other hand the learned counsel appearing for the plaintiffs-opposite parties contended that it is well settled that in terms of Order VII, Rule 11 of the Code of Civil Procedure for the purpose of rejection of plaint the pleading as made in the plaint can only be looked into. Even written statement is not required to be gone into. Since there is no statement in the plaint admitting the aforesaid facts, the trial Court concerned was within its jurisdiction to hold that the subsequent proceeding is not barred by res judicata and it requires proper trial after framing of issues. Whatever is brought on record by the defendant would be matter of adjudication at the time of deciding the suit finally. The plaintiffs may lose the suit on merit but in the aforesaid circumstances certainly the plaint cannot be rejected in terms of Order VII, Rule II of the Code of Civil Procedure.

10 I find no force in the submission raised on behalf of the plaintiffs-opposite parties. No doubt, as per the provisions of Order VII, Rule 11 of the Code of Civil Procedure, for the purposes of determining the question of rejection of plaint on the other grounds mentioned therein, it is the plaint that has to be looked into, but the question is that if the plaintiffs have deliberately suppressed the material facts, the disclosure of which is required by law to be made in terms of Order VI, Rule 2 of the Code of Civil Procedure, whether it was open for the Court concerned to proceed with the trial and decide the suit after framing issues. The order dated 20-11-2006 was challenged by the plaintiffs-judgment-debtors themselves before this Court and the civil revision was dismissed by a reasoned order dated 1-5-2008. Thus, this fact was well known to the plaintiffs and they were duty bound in law to disclose the same which they have not done. Order VI, Rule 2(1) of the Code of Civil Procedure clearly stipulates that the pleadings should contain the material facts. It has been observed by the Apex Court in *Sopan Sukhdeo Sable v. Assistant Charity Commissioner* AIR 2004 SC 1801, that omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. Order VII, Rule 11 of the Code of Civil Procedure lays down an independent remedy made available to the defendant to

challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The real object of Order VII, Rule 11 of the Code of Civil Procedure is to keep out of Courts irresponsible law suits and in case Court is prima facie persuaded of the view that the suit is an abuse of the process of the Court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII, Rule 11 of the Code of Civil Procedure can be exercised.

11. Law is well settled that dexterity of the draftsmen whereby the material facts are camouflaged in a cleverly drafted plaint and illusionary cause of action is set out, cannot defeat the right of the defendant to get the plaint rejected. In this regard it would be pertinent to quote the relevant passage of the observation of the Apex Court in *T. Arivandandam v. T.V. Satyapal* AIR 1977 SC 2421, as under:

"We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the Court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif Court must remember that if on a meaningful — Not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power and Order 7, Rule 11, CPC, taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits."

12. From the aforesaid decisions of the Apex Court rendered in *T. Arivandandam* AIR 1977 SC 2421 as well *I.T.C. Limited v. Debts Recovery Appellate Tribunal* AIR 1998 SC 634 it would emerge that the gross abuse of process of Court would be condemned. Further, the reading of plaint for the purposes of Order VII, Rule 11 of the Code of Civil Procedure would be meaningful reading and not only the formal reading of the same. If real cause of action has not been set out in the plaint rather something illusionary has been stated with a view to get out the scope of Order VII, Rule 11 of the Code of Civil Procedure, such clever drafting and suppression of material facts are not permitted in law and hence such action should be nipped at the bud. Similar view has been taken by learned single Judge of this Court in *Vikash Singh v. Sri Krishna Prasad Sinha* (C.R. No. 1044 of 2006) disposed of on 27-9-2007."

18. Mr. Lall clarifies the position by submitting that patent applications IN 2655MUM2015 and IN 201621044625 filed by Cadila were not in respect of the combination claimed in IN 229051, but claimed distinct improvements over the suit patent. For maintaining a quia timet action, disclosure of the details of the allegedly infringing patent/patent application was necessary. Cadila having, in the said patent applications, asserted that the products claimed under the said patent applications involved improvements over the combination claimed by Novartis under IN 229051, Mr. Lall submits that, in order to maintain a valid quia

timet action, Novartis had necessarily to contend that these improvements were illusory, which, in turn, would require Novartis to undertake the exercise of mapping the claim in the suit patent with the invention claimed under the aforesaid patent applications IN 2655MUM2015 and IN 201621044625. Mr. Lall has pressed into service, in this context, Rule 4(A)(iv), (v), (vi) and (vii) of the Delhi High Court Patent Rules, as well as Order XI of the CPC, as amended by the Commercial Courts Act.

4. Documents to be filed. –

(A) Documents to be filed along with the Plaint *****

(iv) Details of related patent applications/patents to the suit patent, including divisional applications; patents of addition, if any, in India shall be furnished in a tabulated form along with their current status;

(v) A summary of the patented invention and infringement alleged shall be annexed either as a note or as a PowerPoint presentation printed with two slides per image;

(vi) Expert report, if any, relied upon by the Plaintiff for infringement analysis;

(vii) Copies of all relevant correspondence;”

Submissions of Mr Hemant Singh on behalf of the plaintiff

19. Responding to the submissions of Mr. Lall, Mr. Hemant Singh submits, on behalf of Novartis, that a prayer for rejection of a plaint under Order VII Rule 11 could take into account only the averments in the plaint and the documents filed with the plaint, and nothing more. In order for the defendants to succeed in their application, therefore, they would have to establish, positively, that the averments in the plaint of Novartis did not make out a case for infringement.

20. Were the plaintiff to have withheld any material relating to the defendants’ patent applications, or any other material, Mr. Hemant Singh submits that the plaintiff would, perhaps, stand disentitled, on that ground, to any interlocutory relief under Order XXXIX of the CPC; that, however, would not constitute a basis to reject the plaint under Order VII Rule 11. He submits that the plaint was predicated on facts none of which were alleged to be false. The truth or otherwise of the allegations in the plaint, points out Mr. Hemant Singh, are to be examined during trial, and not in an application under Order VII Rule 11.

21. Mr. Singh points out that, in the plaint, Novartis has categorically alleged that the defendants were proposing to manufacture a drug comprising the Valsartan-Sacubitril combination which, if manufactured, would infringe the suit patent. This single allegation, he submits, is sufficient to constitute a valid cause of action on which the plaint could be maintained. Whether, in fact, the drug that the defendants were proposing to manufacture would, in fact, infringe the suit patent, was a matter of trial.

22. Mr. Singh also submits that his client had not instituted the plaint against the defendants merely on a fanciful apprehension. His client had, consequent to obtaining knowledge of the defendants' trade mark application and patent applications, conducted an independent investigation.

23. The correctness of the investigation report, or the data obtained thereby, submits Mr. Singh, cannot be determined in an application under Order VII Rule 11 of the CPC.

24. Having thus come across the application of Zydus for registration of the trademark ARNX in respect of a combination, the patent applications filed by Cadila, again for a Valsartan-Sacubitril combination, and having been informed by the defendants' representatives that they were in the process of launching of the product, Mr. Hemant Singh submits that the law could not possibly expect, much less require, the plaintiff to sit back on its heels without setting the legal process in motion against the defendants.

25. Mr. Hemant Singh submits that the allegations made by Mr. Lall, which also constitute the basis of the application under Order VII Rule 11 CPC, travel much beyond the plaint and, in fact, constitute the defence of the defendants against the plaint. He has invited my attention, in this context, to para 3 of the defendants' application under Order VII Rule 11, which reads thus:

"3. It is respectfully submitted that the present application is being preferred in view of the patently false statements and concealment in the plaint, which are summarized as under for ease of reference, and elaborated in the paragraphs that follow:

a. False averments regarding manufacture of alleged product by the Defendant No 2: It is patently false and incorrect to allege that Defendant No. 2 has obtained a manufacturing licence from CDSCO. It is clarified that the Defendants herein have not even applied for such a license, much less obtained the same. No attempt to procure such information through a Right to information(hereinafter referred to as 'RTI') application is forthcoming from the plaint. It is submitted that it is usual practice to file an RTI application to discern whether a Defendant has applied for a manufacturing license, to make the same a cause of action. Filing of RTI applications is a mechanism provided by law that, apart from promoting transparency and accountability and empowering citizens, provides concrete proof of Defendant's activities and assists the Hon'ble Courts in matters such as the present suit. The Plaintiffs admittedly having various litigation pending against various companies, are well aware of these legal mechanisms. It is therefore submitted that the absence of any attempt to procure credible information on part of the Plaintiffs by a reliable and recognized source is conspicuous by its absence, and goes on to show that the Plaintiffs are aware that the Defendants have not obtained or even applied for such manufacturing license. It is thus submitted that the contentions and averments in the plaint regarding any manufacturing license by the Defendants is false and

the Plaintiffs know them to be false.

b. False statements in the investigation report and incomplete facts: It is submitted that in order to project a false cause of action, the Plaintiffs have filed an investigation report that allegedly confirms that the Defendant No. 2 has obtained a manufacturing license and is even manufacturing the infringing product in Moriya, Ahmadabad. The aforesaid information has been allegedly obtained by the investigation agency by interviewing certain employees of the Defendant companies. However, remarkably, the investigation report does not even mention the names of the employees interviewed, or the date or time of such interviews, or the place in which these interviews were undertaken, and contains no pictures or telephonic transcripts of any such interviews. The investigation reports merely provides incriminating quotes from persons(unnamed) holding vague designations such as 'manager', 'sales manager', 'marketing manager' etc. The Defendants companies, admittedly having pan India presence and operations, have thousands of such regional managers and marketing personnel. It is thus submitted that the supposed investigation report has woefully failed to establish a cause of action even on a demurer. It is submitted that such information can by no stretch of imagination become a question of trial owing to the absence of any information provided to corroborate the contentions, and thus, merits rejection at this stage itself.

c. Contradictory stands in the contentions of the Plaintiffs: Apart from the false statements in the investigation report, it is submitted that the present suit contains averments that are contradictory to the alleged findings of the investigation report filed by the Plaintiffs themselves. On the one hand the Plaintiffs have premised their suit as a quia timet action, meaning thereby, that there is only an apprehension that the Defendants are undertaking any of the activities stated in Section 48 of the Patents Act, 1970 (making, importing, using, offering for sale or selling) and on the other hand, the investigation report alleges that the Defendant No 1 is in fact manufacturing the alleged product in Moriya. Thus, the Plaintiffs have not placed complete reliance on the investigation report filed by themselves, since, had the Plaintiffs believed their own investigation report to be true, the present suit ought to have been an infringement suit based on the alleged manufacture of the product by the Defendants as opposed to a quia timet action, and Plaintiffs would have substantiated their claim of infringement with any valid and substantial proof obtained during the investigation. However, being fully aware of the fact that no such manufacturing is taking place at Moriya or anywhere else, the Plaintiffs chose to file a quia timet action to reduce their burden of proof and filed along with the plaint an investigation report making bald averments regarding manufacture of the alleged product. It is submitted that patently false and incorrect statements have been made in the investigation report, with the attempt to make the findings of the report appear as questions of trial, and in the interregnum, procure interim reliefs by this Hon'ble Court. It is submitted that in the light of the aforesaid, the present suit is an abuse of the process of

law, and should be dismissed outright. The Defendants herein reserve their right to take appropriate legal action against the Plaintiffs as well as the investigation agency Strategic Analysis India Pvt Ltd (SAI) for making the aforesaid false and baseless allegations through a fabricated investigation report.

d. Concealments: It is respectfully submitted that the trade mark application mentioned in the plaint have been filed by the Defendant No. 1 since there was an ongoing licensing talks between the parties. The details of licensing negotiations have been conveniently concealed in the plaint. It is submitted that a confidentiality agreement and term sheet had been signed between the parties, clearly evincing the approval and signatures of the Plaintiffs, which has been concealed in the plaint. Thus, the applications for the trademark ARNX had been filed in order to sell the product under the Defendant No 1's trade mark and nothing more. It is submitted that despite being in the middle of negotiations, no attempt was made by the Plaintiffs to seek any clarification as regards this application, or send a letter/legal notice/email to the Defendants. The plaint finds no mention of the negotiations, and has been drafted to project that the Defendants have indulged in illegal activities allegedly unbeknownst to the Plaintiffs. It is submitted that the aforesaid facts being material particulars have been intentionally concealed and merit no indulgence, since had the same been disclosed, it would have become immediately apparent that there is no cause of action in the present suit.

e. False averments regarding patent applications of Defendant No2: With respect to the patent application, it is clarified that patents are a reward for incremental innovation and improvements on the existing art. Thus, the Defendant No 2 has filed a patent application seeking a patent on the improvement/innovation on the existing art, which would be put to test before the appropriate forum. Thus, by no stretch of imagination can it be said that filing of a patent application amounts to infringement of an existing granted patent. It is submitted that the plaint fails to disclose any averments as to what the patent applications pertain to, apart from a bald averment that the applications have been filed "pertaining to different forms of Valsartan and Sacubitril"; or where in the patent applications has the Defendant No 1 expressed an interest in manufacturing the claimed product of the Plaintiffs, or what, if any, are the similarities between the patent applications of the Defendant No 1 and the granted claims of the Plaintiffs. It is further submitted that the Plaintiffs have not even annexed copies of the patent applications with the documents filed with the plaint, further evincing the vague pleadings that do not disclose a valid cause of action even on a demurrer, and in fact, misrepresent the correct factual position.

f. The present suit is not a valid quia timet action: It is submitted that although the plaint avers that the present suit is a quia timet action, none of the factors required to prove a valid quia timet action have been fulfilled by the Plaintiffs. It is submitted that there cannot be any threat or apprehension of manufacture or sale of any product containing valsartan and Sacubirtil by the Defendants since

the Defendants were in fact negotiating with the Plaintiffs to become the Plaintiffs licensees as mentioned above. There is no reason forthcoming as to why the Defendants would infringe the product that they were in negotiations to procure a license for.”

26. The grounds urged in para 3 of the defendants’ application, reproduced supra, submits Mr. Hemant Singh, are not valid grounds on which Novartis’ plaint could be rejected under Order VII Rule 11 of the CPC. The contentions of Mr. Lall, submits Mr. Hemant Singh, could at best constitute grounds on the basis of which the defendants could urge that the plaint suffered from insufficiency of pleadings.

27. Apropos the exception taken by Mr. Lall to the plaintiff not having mapped the suit patent with the allegedly infringing patents for which applications IN 2655MUM2015 and IN 201621044625 had been filed by Cadila, Mr. Hemant Singh submits that there is no prescribed format in which such mapping is required to be done. Apart from the fact that the very application by Zydus for obtaining the ARNX trademark was itself sufficient to maintain the plaint, Mr. Hemant Singh submits that the allegations in para 17 of the plaint sufficiently mapped the suit patent and the proposed infringing patents of Cadila, for Novartis to be able to maintain the suit even on the aspect of patent infringement.

28. Mr. Hemant Singh pressed into service, in respect of his contentions, the judgments of the Supreme Court in *Dahiben v. Arvindbhai Kalyanji Bhanusali* (2020) 7 SCC 366 and *D. Ramachandran v. R.V. Janakiraman* (1999) 3 SCC 267.

Analysis

What constitutes a “cause of action”? The scope of Order VII Rule 11

29. Order VII Rule 11 of the CPC permits rejection of a plaint in six circumstances, enumerated in clauses (a) to (f). Of these, the clause that the defendants have chosen to invoke is Clause (a), which allows the Court to reject the plaint “where it does not disclose a cause of action”.

30. The peripheries of the expression “cause of action” stand demarcated in several decisions of the Supreme Court.

31. Para 17 of the report in *Kunjan Nair Sivaraman Nair v. Narayanan Nair* (2004) 3 SCC 277 approves the following definition, contained in Halsbury’s Laws of England:

“ “Cause of action” has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. ‘Cause of action’ has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding

the action, not merely the technical cause of action."

32. Navinchandra N. Majithia v. State of Maharashtra (2000) 7 SCC 640, approves Stroud's [Stroud's Judicial Dictionary] definition of "cause of action" as being "the entire set of facts that gives rise to an enforceable claim ... every fact, which if, traversed, the plaintiff must prove in order to obtain judgment".

33. In Gurdit Singh v. Munsha Singh AIR 1977 SC 640, the Supreme Court held thus, with respect to the expression "cause of action":

"The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense it has been used to denote the whole bundle of material facts which a plaintiff must prove in order to succeed."

34. State of Rajasthan v. Swaika Properties AIR 1985 SC 1289, A.B.C. Laminart (P) Ltd v. A.P. Agencies AIR 1989 SC 1239, Bloom Dekor Ltd. v Subhash Himatlal Desai (1994) 6 SCC 322, ONGC v. Utpal Kumar Basu (1994) 4 SCC 711, Hari Shanker Jain v. Sonia Gandhi (2001) 8 SCC 233 and Rajasthan High Court Advocates' Association v. UOI AIR 2001 SC 416 endorse the following definition of the expression "cause of action":

"The 'cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant."

35. That the bundle of facts which have to be proved by the plaintiff in order to succeed in his plaint constitutes "cause of action" for instituting the suit is the view taken by the Supreme Court, additionally, in South East Asia Shipping Company Ltd v. Nav Bharat Enterprises (P) Ltd. (1996) 3 SCC 443, Kusum Ingots & Alloys Ltd v. UOI (2004) 6 SCC 254, U.O.I. v. Adani Exports Ltd. (2002) 1 SCC 567, Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I (2004) 9 SCC 512. National Textile Corporation Ltd. v. Haribox Swalram (2004) 9 SCC 786 further clarified the position by declaring that "each and every fact pleaded by a party in his petition does not ipso facto lead to conclusion that those facts give rise to cause of action unless those facts have a nexus or relevance with a lis that is involved in the case".

36. Cutting to the chase, the issue of whether a suit discloses, or does not disclose, a cause of action has to be decided on the basis of the facts averred in the plaint. If the factual averments in the plaint lay out a fair field on which the plaintiffs can be said to have a right to sue the defendants, the plaint discloses a cause of action. The likelihood of success in the suit is altogether immaterial. If, however, the facts contained in the plaint, seen in conjunction with the accompanying documents, do not assert any right in the plaintiffs and against the defendant, the plaint does not disclose a cause of action and is liable to be

rejected under Order VII Rule 11(a) of the CPC. What is required, therefore, in the plaint, is only the assertion of a right against the defendant, and the existence of supportive assertions and material on the basis of which the right is asserted. What is, therefore, to be seen is whether there exists a basis to assert the right, not whether the basis, or supportive material, is sufficient to sustain the assertion.

37. While examining whether the plaint could be rejected Order VII Rule 11(a), the Court is, therefore, not concerned with the chance of success of the plaintiffs, on the basis of the facts averred by him. That is a consideration entirely foreign to Order VII Rule 11(a). All that has to be seen is whether the plaintiffs have made out a right to sue. If a right to sue stands made out on the facts averred in the plaint, the plaint discloses a cause of action, even if the cause of action be thin as tinsel.

38. In this backdrop, one may refer to a few authorities which authoritatively exposit the law governing Order VII Rule 11. Three considerably recent decisions of the Supreme Court on the point are to be found in *Dahiben* (2020) 7 SCC 366, *Rajendra Bajoria v. Hemant Kumar Jalan* 2021 SCC OnLine SC 764 and *Srihari Hanumandas Totala v. Hemant Vithal Kamat* (2021) 9 SCC 99.

39. *Dahiben* (2020) 7 SCC 366, which is often followed, referred to several earlier decisions on the point. The following passages are relevant:

"23.4 In *Azhar Hussain v. Rajiv Gandhi* 1986 Supp SCC 315, this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words:

"12.....The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

23.6. Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint², read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.7. Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:

"14. Production of document on which plaintiff sues or relies.– (1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

(emphasis supplied)

23.8 Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9 In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10 At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

23.11 The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success I & Anr.* (2004) 9 SCC 512, which reads as:

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23.12. In *Hardesh Ores (P.) Ltd. v. Hede & Co.* (2007) 5 SCC 614 the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or

subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran (1999) 3 SCC 267.

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

23.14. The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra (2003) 1 SCC 557. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain 1986 Supp SCC 315.

23.15. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.

24. "Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

24.1 In *Swamy Atmanand v. Sri Ramakrishna Tapovanam* (2005) 10 SCC 51 this Court held :

"24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove an order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded."

(emphasis supplied)

24.2. In *T. Arivandandam* AIR 1977 SC 2421 this Court held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : -

"5. ...The learned Munsiff must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O. VII, R. 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if

clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing ...”

(emphasis supplied)

24.3. Subsequently, in *I.T.C. Ltd.* AIR 1998 SC 634, this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Rama Chandra Murthy v. Syed Jalal* (2017) 13 SCC 174 held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.”

40. *Rajendra Bajoria* 2021 SCC OnLine SC 764, which followed *Dahiben* (2020) 7 SCC 366, held, with respect to Order VII Rule 11, thus:

“13. No doubt that, it is rightly contended on behalf of the plaintiffs that, only on the basis of the averments made in the plaint, it could be ascertained as to whether a cause of action is made out or not. It is equally true that for finding out the same, the entire pleadings in the plaint will have to be read and that too, at their face value. At this stage, the defence taken by the defendants cannot be looked into.

14. We may gainfully refer to the observations of this Court in the case of *T. Arivandandam* AIR 1977 SC 2421:

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

“It is dangerous to be too good.”

[emphasis supplied]

15. It could thus be seen that this Court has held that reading of the averments made in the plaint should not only be formal but also meaningful. It has been held that if clever drafting has created the illusion of a cause of action, and a meaningful reading thereof would show that the pleadings are manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, then the court should exercise its power under Order VII Rule 11 of CPC. It has been held that such a suit has to be nipped in the bud at the first hearing itself.

17. It could thus be seen that the court has to find out as to whether in the background of the facts, the relief, as claimed in the plaint, can be granted to the plaintiff. It has been held that if the court finds that none of the reliefs sought in the plaint can be granted to the plaintiff under the law, the question then arises is as to whether such a suit is to be allowed to continue and go for trial. This Court answered the said question by holding that such a suit should be thrown out at the threshold. This Court, therefore, upheld the order passed by the trial court of rejecting the suit and that of the appellate court, thereby affirming the decision of the trial court. This Court set aside the order passed by the High Court, wherein the High Court had set aside the concurrent orders of the trial court and the appellate court and had restored and remanded the suit for trial to the trial court.

19. We are in complete agreement with the findings of the High Court. Insofar as the reliance placed by Shri Jain on the judgment of this Court in the case of Dahiben (2020) 7 SCC 366, to which one of us (L. Nageswara Rao, J.) was a member, is concerned, in our view, the said judgment rather than supporting the case of the plaintiffs, would support the case of the defendants. Paragraphs 23.3, 23.4, 23.5 and 23.6 in the case of Dahiben (2020) 7 SCC 366 read thus:

"23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain 1986 Supp SCC 315 [Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :

"12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the

respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.”

20. It could thus be seen that this Court has held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to. However, under Order VII Rule 11 of CPC, the duty is cast upon the court to determine whether the plaint discloses a cause of action, by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. This Court has held that the underlying object of Order VII Rule 11 of CPC is that when a plaint does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings. It has been held that in such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted.”

41. Srihari Hanumandas Totala (2021) 9 SCC 99 dealt essentially with Order VII Rule 11(d) but also approved the following statement of the law, to be found in Saleem Bhais³², which applies to Clause (a) as well as to (d) of Order VII Rule 11:

“9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”

42. Equally, instructive are the following passages from Raghwendra Sharan Singh v. Ram Prasanna Singh³⁶:

“6.7. In Sopan Sukhdeo Sable AIR 2004 SC 1801, in paras 11 and 12, this Court

has observed as under:

11. In ITC Ltd. AIR 1998 SC 634, it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam AIR 1977 SC 2421)

6.8. In Madanuri Sri Rama Chandra Murthy (2017) 13 SCC 174, this Court has observed and held as under:

"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

43. In Urvashiben v. Krishnakant Manuprasad Trivedi (2019) 13 SCC 372, it was held that "for the purpose of deciding application filed under Order VII Rule 11 only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into". There is a

litany of similar authorities, including *Kamala v. K. T. Eshwara Sa* (2008) 12 SCC 661 and *Vaish Aggarwal Panchayat v. Inder Kumar* (2020) 12 SCC 809.

44. The plain words employed by clauses (a) and (d) of Order VII Rule 11, too, serve to underscore this legal position. Clause (a) requires the plaint to be rejected “where it does not disclose a cause of action”. The disclosure or non-disclosure, therefore, has to be in the plaint, and the plaint alone. Clause (d), similarly, requires the plaint to be rejected “where the suit appears from the statement in the plaint to be barred by any law”. Again, what is relevant is “the statement in the plaint”. Whether, therefore, the defendant relies on clause (a) or (d) of Order VII Rule 11, he has to restrict his examination to the averments in the plaint, and in the plaint alone – seen, of course, in conjunction with the documents filed with the plaint.

45. That said, the Court has to subject the plaint to careful scrutiny. The entirety of the plaint is to be seen, and a holistic approach adopted. Equally, the Court should not allow its discretion to be swayed by “artful drafting” of the plaint, aimed at creating a smokescreen of a cause of action, where none actually exists, or embellishing a plaint which is actually barred by law by clever averments or interpolations which may seem to indicate to the contrary.

Applying the above principles to the facts

46. Given the scope and sweep of Order VII Rule 11 of the CPC as thus identified, can it be said that the contentions advanced by Mr. Lall make out a case for guillotining, at the very inception, the plaint instituted by Novartis, without allowing it the courtesy of proceeding to trial?

47. In my considered opinion, they do not.

48. The plaint instituted by Novartis against Zydus and Cadila alleges that

(i) the Valsartan-Sacubitril combination forming subject matter of the suit patent has greater therapeutic effect, in cardiovascular therapy, than administration of Valsartan or NEP inhibitors alone, thereby rendering it an improvement over existing state of the art,

(ii) in conceptualizing and inventing the suit patent, a great amount of research and experimentation was expended by Novartis,

(iii) the suit patent was novel, inventive and not known or obvious,

(iv) the suit patent stood granted in over 50 countries,

(v) there was no pre-grant or post-grant opposition to the suit patent,

(vi) the Defendants had applied for registration of the mark “ARNX” in respect of “medicinal, pharmaceutical and veterinary preparations for medical purpose, for medical use and chemical preparations of Valsartan and Sacubitril for cardiovascular purposes”, on “proposed to be used” basis,

(vii) the proposed product of the defendant, therefore, if manufactured, would infringe the suit patent IN 229051,

(viii) the SAI investigation report dated 14th December 2021, confirmed that Cadila had obtained manufacturing and marketing approval for a formulation containing Valsartan and Sacubitril,

(ix) the SAI investigator was informed, by the personnel of Cadila, that the defendants intended to commercially launch and supply their Valsartan-Sacubitril formulation in the market shortly and

(x) thus, there was an imminent threat of the defendants engaging in activities which would infringe the plaintiffs' suit patent.

49. These assertions in the plaint are sufficient to constitute a cause of action in order to enable Novartis to maintain a quia timet suit. Mr Lall has relied on the observations in *Teva Pharmaceutical Industries (2014) 212 DLT 321* in this regard. *Teva Pharmaceutical Industries (2014) 212 DLT 321* holds that (i) a quia timet action "cannot be brought on speculation in the hope that sufficient facts may be gleaned on discovery that will support the allegations made in the pleadings", and (ii) "the statement of claim must allege a deliberate expressed intention to engage in activity the result of which would raise a strong possibility of infringement; the activity to be engaged must be alleged to be imminent and the resulting damage to the plaintiff must be alleged to be very substantial if not irreparable; and, finally, the facts pleaded must be cogent, precise and material". The plaint, therefore, is only required to allege. Proving of the allegations has to be left to trial. A plaint, which so alleges, cannot be thrown out under Order VII Rule 11 on the ground that the allegations have no merit, or that the material placed on record with the plaint is not sufficient to prove the allegation. That said, the decision also cautions that the quia timet action must not be merely speculative, merely alleging without the factual basis for the allegation made known. Equally, the facts pleaded must be cogent, precise and material.

50. What has to be seen, therefore, in assessing whether a quia timet plaint can be rejected outright under Order VII Rule 11, is

(i) whether the plaint alleges

(a) a deliberate expressed intention to engage in activity the result of which would raise a strong possibility of infringement,

(b) that the activity to be engaged in is imminent, and

(c) that, if the defendant were to engage in the activity, the plaintiff would suffer substantial, if not irreparable, prejudice,

(ii) that the claim of the plaintiff is not merely speculative, in the hope that sufficient facts, to support the allegations, would be gleaned on discovery during the course of trial, and

(iii) that the plaint contains cogent, precise and material recitals of facts.

Nothing more is to be seen, when examining an Order VII Rule 11 challenge.

51. The plaint, thus seen, satisfies the pre-requisites to maintain a quia timet action. The plaint alleges, with requisite cogency and precision, that Zydus and Cadila are in about to engage in the manufacture of a Valsartan-Sacubitril combination which, if manufactured, would infringe the suit patent. The plea of substantial and, in fact, irreparable prejudice to the plaintiff, were the defendants to do so, is inbuilt into the allegation, as the plaintiff claims to be the holder of a valid patent for the Valsartan-Sacubitril combination as cardiovascular therapy. The allegation is supported by Zydus' application for registration of the ARNX trademark and Cadila's IN 2655MUM2015 and IN 201621044625 patent applications and the information collected by SAI during investigation. The facts pleaded are clear and precise, and not merely speculative.

52. There is also substance in Mr. Hemant Singh's submission that, as a holder of a valid suit patent claiming the Valsartan and Sacubitril combination as cardiovascular therapy, the plaintiffs could not be expected to sit back when another drug manufacturer applied for registration of a trademark covering an identical combination, applied for a patent in respect of the said combination and also informed the plaintiffs' investigator that the drug was to be launched in the market shortly and that the requisite manufacturing and marketing approval had already been obtained.

53. None of the factors cited by Mr. Chander Lall would, therefore, justify emasculatation of the plaintiffs' suit at the very outset without trial under Order VII Rule 11 of the CPC.

54. Mr. Lall also sought to contend that the averments in the plaint instituted by the plaintiffs were prevaricating in nature as, at one point, the suit purported to be a quia timet action whereas, at another, it was alleged that the defendants were manufacturing the impugned products at Moriya, Ahmadabad. The contention of Mr. Lall is that, if the defendants were, in fact, manufacturing the product at Moriya, Ahmadabad, the suit could not be maintained as a quia timet action.

55. Even if this contention were to be accepted, it would not make out a case for rejection of the plaint filed by Novartis under Order VII Rule 11. Contradictions in a plaint, even if they exist, cannot be a ground to reject the plaint at the outset without trial. That apart, it is doubtful whether this contention is even available to Mr. Lall, as the defendants, in their Order VII Rule 11 application, specifically contend that they are not manufacturing the Valsartan and Sacubitril combination and have not obtained any manufacturing or marketing license thereof. The defendants cannot be permitted to positively aver that they are not engaged in the manufacture of the Valsartan-Sacubitril combination and, simultaneously, that, if they were, the plaint instituted by Novartis would not be maintainable as a quia timet action.

56. Considerable emphasis was placed by Mr. Lall on the Delhi High Court Patent Rules read with the Commercial Courts Act, 2015 to contend that, in every patent infringement suit, mapping of the suit patent which the alleged infringing patent was mandatory. The plaintiffs having specifically alleged that Cadila had applied for registration of its patents IN 2655MUM2015 and IN 201621044625, Mr. Lall contends that the plaint instituted by the plaintiffs was defective as it did not disclose the details of the suit patent applications, which were available in the public domain, or map the suit patent on to the patents forming subject matter of the said applications.

57. Even if this were so, it would not justify any conclusion that the plaint of Novartis was devoid of a cause of action so as to justify its rejection under Order VII Rule 11(a).

58. All that Rule 3(A)(ix) and (x)4 of the Delhi High Court Patent Rules require is that a plaint in a patent infringement action shall, to the extent possible, include "precise claims versus product (or process) chart mapping" and "infringement analysis explained with respect to the granted claims in this specification". The applicability of these provisions, in the case of a quia timet action where the patent of the defendant has yet to be granted, is itself questionable. That apart, the Delhi High Court Patent Rules do not, at any point, indicate that, if these formalities are not contained in a plaint alleging infringement of patent, the plaint can be rejected. The various contents which a plaint in a patent suit is required to contain, as envisaged by Rule 3(A) thereof are merely in the nature of guidelines, intended at facilitating an expeditious resolution of the dispute. Even if the plaint in a patent infringement suit does not, *stricto sensu*, contain all the details envisaged in the various clauses of Rule 3(A), in the manner as contemplated therein, the plaint would not be liable to be rejected on that score.

59. The fact that the various clauses in the Rule 3(A) of the Delhi High Court Patent Rules are not cast in iron is apparent even from the use of the word "to the extent possible".

60. There are number of decisions which hold unequivocally, that a considerable degree of flexibility is imputed by the use of the words "as far as possible".

61. In *K. K. Sharma v. UOI* 1982 (2) SLJ 635, it was held that the expression "as far as possible" provides for desired flexibility which could be said to be akin to a play in the joints of administrative machinery. The expression was said, in *Osmania University v. V.S. Muthurangam* 1997 10 SCC 741, to "inhere in it and in-built flexibility". In *Rajendra Singh v. State of U.P.* 1998 7 SCC 654, the Supreme Court held that the expression "as far as possible" would mean a discretion vested in the prescribed authority which it can exercise at the time of carving the surplus area from out of the total holding of a person".

62. *Iridium India Telecom Ltd v. Motorola Inc* (2005) 2 SCC 145 was concerned with clause 37 of the Letters Patent of 1865 of the High Court of judicature at Bombay, which dealt with "Civil Procedure and Regulation of proceedings", which

read thus:

"37. And we do further ordain that it shall be lawful for the said High Court of Judicature at Fort William in Bengal, from time to time, to make rules and orders for the purpose of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings in its admiralty, vice-admiralty, testamentary, intestate and matrimonial jurisdictions, respectively:

Provided that the said High Court shall be guided in making such rules and orders as far as possible, by the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General-in-Council, and being Act 8 of 1859, and the provisions of any law which has been made amending or altering the same, by competent legislative authority for India."

Interpreting the expression "as far as possible" in the proviso to Clause 37 of the Letters Patent, the Supreme Court, in para 44 of the report in *Iridium India Telecom* (2005) 2 SCC 145, affirmed and approved an earlier decision of the full Bench of the High Court of Calcutta in *Manickchand Durgaprasad v. Pratabmull Rameswar* AIR 1961 Cal 483 (FB) in the following words:

"44. The Full Bench of the High Court of Calcutta in *Manickchand Durgaprasad* AIR 1961 Cal 483 (FB) had occasion to consider this very contention with regard to clause 37 of the Letters Patent and observed:

"The restriction upon the power of the Court as contained in the proviso to clause 37 of the Letters Patent is that the rules framed under that clause should, 'as far as possible' be in conformity with the provisions of the Code of Civil Procedure. This restriction as the phrase 'as far as possible' indicates is merely directory. The provisions of the Code of Civil Procedure are intended for the purpose of guidance of this Court in framing rules under clause 37 of the Letters Patent. Consequently, if any rule framed by the High Court under clause 37 be inconsistent with or confers any additional power besides what is granted by the Code of Civil Procedure, the rule framed under clause 37 will prevail over the corresponding provisions of the Code of Civil Procedure."

This we think is the correct view to be taken in interpreting the words "as far as possible" in clause 37 of the Letters Patent. This interpretation would be consistent with the amplitude of the words used in Section 129 CPC by which the High Court is empowered to make rules "not inconsistent with the Letters Patent to regulate its own procedure in the exercise of its original jurisdiction as it shall think fit".

63. In 38 of the report in *State of Madhya Pradesh v. Narmada Bachao Andolan* (2011) 7 SCC 639, the legal position with respect to interpretation of the expression "as far as possible" was clarified still further, thus:

" "As far as possible"

38. The aforesaid phrase provides for flexibility, clothing the authority concerned

with powers to meet special situations where the normal process of resolution cannot flow smoothly. The aforesaid phrase can be interpreted as not being prohibitory in nature. The said words rather connote a discretion vested in the prescribed authority. It is thus discretion and not compulsion. There is no hard-and-fast rule in this regard as these words give a discretion to the authority concerned. Once the authority exercises its discretion, the court should not interfere with the said discretion/decision unless it is found to be palpably arbitrary. (Vide *Iridium India Telecom Ltd.* (2005) 2 SCC 145 and *High Court of Judicature for Rajasthan v. Veena Verma* (2009) 14 SCC 734) Thus, it is evident that this phrase simply means that the principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case."

64. Etymologically, the expressions "to the extent possible" and "as far as possible" are synonymous. The aforesaid decisions which lay down the principles for interpretation of the expression "as far as possible" would, therefore, apply equally to interpretation of the expression "to the extent possible".

65. The use of the expression "to the extent possible" in Rule 3(A) of the Delhi High Court Patent Rules, therefore, indicates that strict compliance with the rigour of the various clauses of the said rule is not mandatory and that a plaintiff is expected to comply therewith only to the extent it is possible to do so. This reasoning would apply, *mutatis mutandis*, to Rule 4(A) of the Delhi High Court Patent Rules¹⁰ as well, which, too, requires the documents enumerated in the Rule to be filed with the plaint "to the extent possible".

66. Patent legislation is, in a manner of speaking, *sui generis* and the compulsions and considerations that guide such legislation are often unique. The use of the expression "to the extent possible" is, therefore, cautious, circumspect and well-guided, and, if the Court were to hold the provisions of Rule 3(A) and 4(A) to be mandatory, and a plaint that does not conform to the protocol envisaged by the said provisions to be vulnerable to rejection under Order VII Rule 11, the Court may well be militating against the intent of the Rule makers in incorporating the "to the extent possible" caveat. There may be any number of reasons why it is not possible to adhere to the disclosure regime envisaged by Rule 3(A) of the Delhi High Court Patent Rules, including, *inter alia*, considerations of confidentiality and practical impossibility. It cannot be said that the mere accessibility, or availability, of the details envisaged by Rules 3(A) or 4(A) would, in every case, make it possible to place the said details on record. The Rule makers have, therefore, consciously required compliance with the protocol prescribed in Rule 3(A) only to the extent possible. The corollary would, therefore, be that non-compliance with the protocol would not invalidate the plaint.

67. Even otherwise, it is well-settled that rules of procedure are to be treated as directory, even if they use the expression "shall". Where prescriptive stipulations do not also prescribe the sanction which would follow on their violation, the prescription is to be regarded, ordinarily, as directory, rather than mandatory.

The position in law, in this regard, is elucidated, without any equivocation whatsoever, in the following passages from *Rani Kusum v. Kanchan Devi* (2005) 6 SCC 705:

"9. Order 8 Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order 8 Rule 1 is procedural. It is not a part of the substantive law. The substituted Order 8 Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.

10. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

11. The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.

12. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in the judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive. (See *Sushil Kumar Sen v. State of Bihar* (1975) 1 SCC 774)

13. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. (See *Blyth v. Blyth* (1966) 1 All ER 524) A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or

frustrates the recipient of justice is not to be followed. (See *Shreenath v. Rajesh* (1998) 4 SCC 543)

14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

15. It is also to be noted that though the power of the court under the proviso appended to Rule 1 Order 8 is circumscribed by the words "shall not be later than ninety days" but the consequences flowing from non-extension of time are not specifically provided for though they may be read in by necessary implication. Merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.

16. Challenge to the constitutional validity of the Amendment Act and the 1999 Amendment Act was rejected by this Court in *Salem Advocate Bar Assn. v. Union of India* (I) (2003) 1 SCC 49 : *JT* (2002) 9 SC 175. However, to work out modalities in respect of certain provisions a Committee was constituted. After receipt of the Committee's report the matter was considered by a three-Judge Bench in *Salem Advocate Bar Assn. v. Union of India* (II) (2005) 6 SCC 344 : *JT* (2005) 6 SC 486. As regards Order 8 Rule 1 the Committee's report is as follows : (SCC pp. 362-64, paras 15-21)

"15. The question is whether the court has any power or jurisdiction to extend the period beyond 90 days. The maximum period of 90 days to file written statement has been provided but the consequences on failure to file written statement within the said period have not been provided for in Order 8 Rule 1. The point for consideration is whether the provision providing for maximum period of ninety days is mandatory and, therefore, the court is altogether powerless to extend the time even in an exceptionally hard case.

16. It has been common practice for the parties to take long adjournments for filing written statements. The legislature with a view to curb this practice and to avoid unnecessary delay and adjournments, has provided for the maximum period within which the written statement is required to be filed. The mandatory or directory nature of Order 8 Rule 1 shall have to be determined by having regard to the object sought to be achieved by the amendment. It is, thus, necessary to find out the intention of the legislature. The consequences which may follow and whether the same were intended by the legislature have also to be kept in view.

17. In *Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur* 1965) 1 SCR 970 : AIR 1965 SC 895, a Constitution Bench of this Court held that the question whether a particular provision is mandatory or directory cannot be resolved by laying down any general rule and it would depend upon the facts of each case

and for that purpose the object of the statute in making out the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.

18. In *Sangram Singh v. Election Tribunal, Kotah* (1955) 2 SCR 1 : AIR 1955 SC 425, considering the provisions of the Code dealing with the trial of the suits, it was opined that : (SCR pp. 8-9)

‘ Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends : not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.’

19. In *Topline Shoes Ltd. v. Corpn. Bank* (2002) 6 SCC 33 the question for consideration was whether the State Consumer Disputes Redressal Commission could grant time to the respondent to file reply beyond total period of 45 days in view of Section 13(2) of the Consumer Protection Act, 1986. It was held that the intention to provide a time-frame to file reply is really made to expedite the hearing of such matters and avoid unnecessary adjournments. It was noticed that no penal consequences had been prescribed if the reply is not filed in the prescribed time. The provision was held to be directory. It was observed that the provision is more by way of procedure to achieve the object of speedy disposal of the case.

20. The use of the word ‘shall’ in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word ‘shall’ is ordinarily indicative

of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.

21. In construing this provision, support can also be had from Order 8 Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the court, the court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to the suit as it thinks fit. In the context of the provision, despite use of the word 'shall', the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order 8 Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 of Order 8, the court in its discretion would have the power to allow the defendant to file written statement even after expiry of the period of 90 days provided in Order 8 Rule 1. There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to 'make such order in relation to the suit as it thinks fit'. Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time-limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1."

(emphasis in original)

17. The Bench in JT para 54 after considering the Committee's Report has observed as follows : (SCC p. 374, para 50)

"50. Having regard to the constitutional obligation to provide fair, quick and speedy justice, we direct the Central Government to examine the aforesaid suggestions and submit a report to this Court within four months."

18. After elaborating the purpose for introduction of Order 8 Rule 1, this Court in Kailash (2005) 4 SCC 480 at SCC para 45 observed that no straitjacket formula can be laid down except that observance of time schedule contemplated by Order

8 Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. The conclusions have been summed up in SCC para 46. The relevant portion reads as follows : (SCC pp. 500-01)

"46. (iv) The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the court to extend the time. Though the language of the proviso to Rule 1 Order 8 CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away.

(v) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case."

68. Non-compliance with the protocol prescribed in Rule 3(A) of the Delhi High Court Patent Rules cannot, therefore, be cited as a ground to reject a plaint under Order VII Rule 11 of the CPC.

69. Mr. Lall also sought to contend that, in examining whether a plaint was supported by the requisite cause of action, the Court was not to allow itself to be misled by artful drafting, which sought to point at the existence of cause of action where non actually existed. He submits that the present case was an instance of such "artful drafting" whereby Novartis was setting up a cause of action where there was, in reality, none. He juxtaposes this submission with his submission that the plaintiff had not placed on record the details of the patent applications IN 2655MUM2015 and IN 201621044625 filed by Cadila. Had he done so, Mr. Lall submits that Novartis would additionally have to map the suit patent to the said patents, which would expose the plaint as being bereft of any cause of action.

70. The argument, in my view, is stretching the limits of Order VII Rule 11(a) of the CPC to an unacceptable degree. The existence, or non-existence, of a cause of action to base a plaint, for the purposes of Order VII Rule 11(a) has, it may be reiterated, to be determined solely on the basis of the allegations in the plaint. If the assertions and allegations in the plaint, even if proved and established by the plaintiff, do not make out a case for grant, to the plaintiff, of the relief sought in the plaint, it may be said that the plaint is bereft of a cause of action and merits rejection under Order VII Rule 11(a). The present case does not, however, make out any such case for rejection. The suit patent asserted in the plaint is specifically for a combination of Valsartan and Sacubitril. The patent applications IN 2655MUM2015 and IN 201621044625 filed by Cadila were also for a combination for Valsartan and Sacubitril. That, by itself, was sufficient to justify the invocation, by the Novartis of remedies available against Zydus and Cadila in civil law.

71. Mr. Lall also sought to contend that, by not disclosing the fact that the defendants were negotiating with Novartis to manufacture and market the Valsartan-Sacubitril combination under their brand name ARNX, the plaintiff had created an artificial cause of action. Had the details of the said negotiations been disclosed, the circumstances in which Zydus had applied for registration of the ARNX trademark would have become apparent.

72. That, again, cannot be a basis to contend that the plaintiff has not made out a cause of action in the plaint. It is precisely to deal with such an argument that Courts have held, time and again, that an application under Order VII Rule 11(a) or (d) has to be decided on the basis of the assertions and allegations in the plaint alone, without referring to the defence of the defendant. What Mr. Lall is calling upon this Court to do, by this submission, is to hold, on the basis of the defence that Zydus intends to put up to the submission of the plaintiff that Zydus has applied for registration of the ARNX mark, that Novartis had no cause of action against Zydus. Doing so would militate against the most fundamental principles of Order VII Rule 11. The contention of Zydus that it had applied for registration of ARNX mark as a pursuant to negotiations with Novartis is, at best, a defence to the submission of Novartis in that regard. It forms no part of the plaint in the present case; ergo, it cannot form any part of the consideration by the Court while examining the application of the defendants under Order VII Rule 11. The sustainability of the defence, and its merit as an answer to the case that Novartis seeks to set up, would have to be examined consequent on trial.

73. For the same reason, the contention of Mr. Lall that, as Zydus was a prospective licensee of Novartis, it could not be treated as an infringer, cannot be accepted, as the contention is predicated on Zydus' defence that it had applied for registration of the ARNX marks as it was negotiating with Novartis for permission to manufacture and sell the drug covered by the suit patent under its ARNX brand name.

Conclusion

74. The submissions of Mr. Lall, therefore, whether seen in isolation or in conjunction with each other, do not make out a case for rejection of the plaint instituted by Novartis against the defendants.

75. The application is accordingly dismissed.