

(2015) 07 DEL CK 0023

In the Delhi High Court

Case No : I.A. Nos. 2371/2014, 2988/2014, 2990/2014, 4649/2014, 4677/2014, 5956/2014, 9155/2014, 9157/2014, 14533/2014, 14534/2014, 791/2015, 11224/2015, 11225/2015, 12830/2015, 12831/2015, 12862/2015 and CCP (O) No. 69/2015 in CS (OS) No. 355 of 2014

Roche Products (India) Pvt. Ltd. and Others

APPELLANT

Vs

Drugs Controller General of India and Others

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12, Order 11 Rule 14, Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A
Contempt of Courts Act, 1971 — Section 11, 12, 2(c)
Delhi High Court Act, 1966 — Section 10

Citation : (2015) 63 PTC 423

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Rajiv Nayar, Sandeep Sethi, Senior Advs., Niti Dixit, Darpan Wadhwa, N. Mahavir, Samiksha Godiyal, Anugrah Robin Frey and Roshni Namboodiry, for the Appellant; Sanjay Jain, ASG, Amit Mahajan, CGSC and Krishanu Barhua, Advocates for the Respondent

Judgement

Manmohan Singh, J.

1. The plaintiffs have filed the suit for injunction. The said suit was listed before Court along with the interim application on 5th February, 2014. After hearing, the summons in the suit were issued to the defendants for 28th February, 2014 and in the interim application, the defendants No. 2 to 4 were restrained from relying upon or otherwise referring to HERCEPTIN?, HERCLON? or BICELTIS? or any data relating to Trastuzumab marketed as HERCEPTIN?, HERCLON? or BICELTIS? including data relating to its manufacturing process, safety, efficacy and sales, in any press releases, public announcements, promotional or other material for the defendants' drugs, i.e. CANMAB and HERTRAZ and from claiming any similarity with HERCEPTIN?, HERCLON? or BICELTIS?.

2. Defendants No. 2 to 4 challenged the said order by filing of two appeals under Order XLIII read with Section 151 CPC and Section 10 of Delhi High Court Act, 1966, being FAO(OS) Nos. 91/2014 and 92/2014 before the Division Bench on 14th February, 2014 who passed the following order:

"After hearing the learned counsel for the parties on both sides, we feel that these appeals be treated as applications under Order XXXIX Rule 4 CPC on behalf of the appellant and they be re-numbered as such.

The matters be listed before the learned Single Judge today itself at 2:15 pm."

3. In view of the said order, the abovementioned two appeals were registered and numbered by the Registry being I.A. Nos. 2988/2014 and 2990/2014 by treating the same as applications under Order XXXIX Rule 4 CPC. The hearing in the interim applications was started on the same date as per orders of the Division Bench.

4. After small hearing by order dated 14th February, 2014, the earlier order passed by the Court on 5th February, 2014 was modified to the extent that if defendant No. 2 has already obtained the approval of package insert in question, then the defendant No. 2 is entitled to use the same till the next date and the other remaining interim order already passed would continue. The earlier order dated 5th February, 2014 was modified for the reason as the statement was made on behalf of defendant No. 2 that on 13th December, 2013 the defendant No. 2 obtained the approval from the Drugs Controller General of India.

5. Thereafter, interim applications and applications for vacating the remaining part of the order have been heard from time to time. The arguments were addressed on behalf of defendant No. 1, defendant No. 2 and defendants No. 3 and 4 by the learned Senior counsel on their behalf. Both the sides also took the adjournments on few dates. During pendency of hearing, the plaintiffs filed an application being I.A. No. 4649/2014 under Order VI Rule 17 CPC for amendment of the plaint as well as an application being I.A. No. 4677/2014 under Order XXXIX Rule 2-A CPC. In the amendment application, replies have been filed on behalf of defendants No. 2 to 4 without prejudice. The plaintiffs also filed an application being I.A. No. 5956/2014 under Order XI Rules 12 and 14 CPC for discovery of documents. The pleadings in the said application are complete. Defendants No. 3 and 4 have also filed an application being I.A. No. 9155/2014 under Order VIII Rule 1 CPC for taking their written statement on record. Similarly, the plaintiffs filed the counter application being I.A. No. 9157/2014 under Order VIII Rule 10 CPC for passing the decree against defendants No. 3 and 4 on account of non-filing of the written statement in time. Even the plaintiffs filed another application being I.A. No. 14533/2014 under Order XXXIX Rule 2-A CPC. Besides, the plaintiffs filed another application being I.A. No. 791/2015 under Section 151 CPC with a prayer to dispose of the discovery application filed by them prior to the commencement of their arguments in rejoinder.

6. Despite of these pending applications, arguments were addressed by the parties with the understanding that let hearing in the interim applications may continue as per directions issued by the Division Bench. When the matter was at the stage of rejoinder arguments on behalf of plaintiffs, the same was stuck due to the change of the new development and subsequent events in the matter as the plaintiffs filed the fresh application being I.A. No. 11224/2015 under Order VI Rule 17 CPC for amendment of the plaint as well as the fresh application being I.A. No. 11225/2015 under Order XXXIX Rules 1 and 2 CPC for passing the interim order.

7. After listing the abovementioned applications, on 25th May, 2015 and 28th May, 2015, the following orders were passed:-

Order dated 25th May, 2015:

"I.A. Nos. 11224/2015 (u/o VI R 17 CPC) and 11225/2015 (u/o XXXIX R 1 and 2 CPC)

The above mentioned fresh applications have been filed by the plaintiffs. Learned counsel appearing on behalf of the plaintiffs submits that certain approvals have been granted during the hearing of earlier interim application. Therefore, it is necessary to file the present applications. Mr. Mahajan, counsel appearing on behalf of the respondent No. 1, admits that certain approvals have been granted. Without expressing anything on merit, let copies of the same be filed within two days. List on 28th May, 2015 for directions."

Order dated 28th May, 2015:

"I.A. No. 11225/2015 (u/o XXXIX R 1 and 2 CPC)

Mr. Sanjay Jain, learned ASG states that the Directorate has no objection to the part approval for additional indications i.e. early breast cancer and metastatic gastric cancer for Trastuzumab which has been granted to defendant No. 2 in accordance with the law and on the basis of cogent material. However, the process for approving the specimen of the carton, labels and package insert for the proposed additional indications would take one month.

Learned counsel for the defendant No. 2 seeks two weeks time to file reply. Let the same be filed within two weeks. However, the defendants No. 3 and 4 reserve their rights.

List on 1st July, 2015.

I.A. No. 11224/2015 (O VI R 17 CPC)

Issue notice to the defendants. Learned counsel appearing on behalf of the defendants accepts the notice. Let the reply be filed within two weeks. Rejoinder, if any be filed by the next date.

List on 1st July, 2015.

CS(OS) 355/2014, I.A. Nos. 2371/2014, 2988/2014, 2990/2014, 4649/2014, 4677/2014, 5956/2014, 9155/2014, 9157/2014, 14533/2014 and 14534/2014

List all the abovesaid pending applications also on the same date i.e. 1st July, 2015. Dasti, under the signatures of the Court Master."

8. In the meanwhile, the defendants have filed the following four applications:-

(i) I.A. No. 12830/2015 (under Order VII Rule 11(a) and (d) CPC for rejection of the plaint) filed by defendant No. 2;

(ii) I.A. No. 12831/2015 (under Section 152 read with Section 151 CPC for clarification/modification of the order dated 28th May, 2015) filed by defendant No. 2;

(iii) I.A. No. 12862/2015 (under Order XXXIX Rules 1 and 2 CPC) filed by defendants No. 3 and 4; and

(iv) CCP(O) No. 69/2015 (under Sections 11 and 12 read with Section 2(c) of the Contempt of Courts Act, 1971) filed by defendant No. 2.

9. When the matter was taken up on 1st July, 2015, the suggestion was made to the learned counsel appearing on behalf of all the defendants as they pressed for urgent hearing in the matter that the subsequent developments/events be brought on record and the hearing in the interim applications may continue, because of the reason that the rejoinder arguments were being addressed by the learned counsel for the plaintiffs and it may not take much time to decide the interim application. The subsequent main events are about the approval for additional indications, i.e. early breast cancer and metastatic gastric cancer for Trastuzumab. The approval sought for carton, label and package insert is yet to be considered by defendant No. 1 and therefore, till then the interim applications are disposed of within short time and till that time, the drug for additional indication be not brought in the market as the approval of earlier label and package insert if the same is granted. However, the said suggestion is not acceptable to the defendants.

10. It is not in dispute that the defendants have been selling their product openly in the market as per earlier approval granted. The only issue at this stage is with regard to the approval for additional indications obtained by defendant No. 2 during the hearing of the interim application and if the approval of specimen of carton, labels and package insert is granted, whether the defendants are entitled to sell the products with additional indications before passing the order in the interim application and whether the same would violate the rights claimed by the plaintiffs or not. It is the admitted position that the approval of specimen of the carton, labels and package insert for the proposed additional indications is not granted, as informed by defendant No. 1. Learned counsel for defendant No. 2 has also admitted that the application for approval of the additional indications was filed in the month of November, 2014 when the interim application was being heard by the Court.

11. Under these circumstances, at this stage the Court inclines to dispose of few pending applications which are filed after the date of passing of the order by the Division Bench on 14th February, 2014 and during the course of the hearing and to pass the direction in the fresh application filed by the plaintiffs in view of further development in the matter:-

I.A. No. 4677/2014 (by plaintiffs)

12. This is an application filed by the plaintiffs under Section 94(c) read with Order XXXIX Rule 2-A and further read with Section 151 CPC.

13. Counter-affidavit/reply be filed by the defendants within two weeks. Rejoinder, if any, be filed within one week thereafter.

14. This application will be decided along with the other pending interim applications.

I.A. No. 5956/2014 (u/o XI R. 12 and 14 for discovery and production of documents by defendant No. 2, filed by plaintiffs)

15. Most of the details about the additional indications have already been disclosed by defendant No. 2. The plaintiffs intend to inspect the records submitted by defendant No. 1.

List this application on 13th August, 2015.

I.A. No. 9155/2014 (u/o VIII R. 1 CPC, by D-3 and 4)

16. Reply is not filed by the plaintiffs. For the reasons stated in the application, the prayer is allowed and the delay in filing the written statement on behalf of defendants No. 3 and 4 is condoned, as no prejudice would be caused to the plaintiffs if the written statement is taken on record, as this Court felt that the written statement on behalf of defendants No. 3 and 4 is necessary in order to decide the real controversy between the parties.

17. The application is accordingly disposed of.

I.A. No. 9157/2014 (u/o VIII R. 10 CPC, by plaintiffs)

18. In view of the order passed in I.A. No. 9155/2014, the present application has become infructuous and the same is accordingly disposed of.

I.A. No. 14533/2014 (u/o XXXIX R. 2-A CPC, by plaintiffs)

19. Counter-affidavit/reply has not been filed by the defendants. Let the same be filed within two weeks. Rejoinder, if any, be filed within one week thereafter.

20. This application would be decided along with the other pending interim applications.

I.A. No. 14534/2014 (u/s 151 CPC for exemption, by plaintiffs)

21. Exemption allowed, subject to just exceptions.

22. The application is disposed of.

I.A. No. 791/2015 (u/s 151 CPC, by plaintiffs)

23. This is an application filed by the plaintiffs under Section 151 CPC with a prayer to dispose of the discovery application filed by the plaintiffs. As the date in the said application is already fixed, no further orders are required to be passed. The present application is accordingly disposed of.

I.A. No. 12830/2015 (u/o VII R. 11(a) and (d) CPC, by D-2)

24. Issue notice to the plaintiffs. Learned counsel for the plaintiffs accepts the same. Let the reply be filed within two weeks. Rejoinder, if any, be filed within one week thereafter.

25. This application would be decided along with the other pending interim applications.

I.A. No. 12831/2015 (u/s 152 CPC, by D-2)

26. The abovementioned application has been filed by defendant No. 2 under Section 152 read with Section 151 CPC for clarification/modification of the order dated 28th May, 2015.

27. It is stated in the application that the order be passed that the reply, if any, be filed in I.A. Nos. 11224/2015 and 11225/2015 without prejudice to the right of defendant No. 2 to contest the said applications. Ordered accordingly.

28. The application is disposed of.

CCP(O) No. 69/2015 (contempt petition by D-2)

29. This is a petition filed by defendant No. 2 under Sections 11 and 12 read with Section 2(c) of the Contempt of Courts Act, 1971.

30. The contention of the learned counsel for defendant No. 2 is that despite of the order dated 28th May, 2015 passed by the Court, the plaintiffs have communicated with defendant No. 1, i.e. the Drugs Controller General of India by misleading it and asked the defendant No. 1 not to grant the approval of the carton, labels and package insert.

31. Mr. Nayar, learned Senior counsel appearing on behalf of the plaintiffs submits that the plaintiffs have merely informed the defendant No. 1 about the interim order passed against defendant No. 2. The plaintiffs have no intention to mislead the defendant No. 1 in any manner. The plaintiffs have no objection if the application made by the defendant No. 1 for approval of the carton, labels and package insert for additional indications be decided on merits after considering the orders passed by the Court from time to time. If the same is granted, the plaintiffs would challenge the same in accordance with law. Defendant No. 2 is satisfied with the statement of the plaintiffs. The defendant No. 1 also agreed to consider the application for approval of carton, labels and

package insert after going through the interim orders dated 5th February, 2014 and 14th February, 2014 and the same would be decided on the basis of rules and regulations. Thus, the contempt application be kept pending and further hearing at this stage is not necessary.

I.A. Nos. 4649/2014 and 11224/2015 (u/o VI R. 17 CPC, by plaintiffs) and I.A. No. 11225/2015 (u/o XXXIX R. 1 and 2 CPC, by plaintiffs)

32. The first application, being I.A. No. 4649/2014, was filed by the plaintiffs on 1st October, 2014. Admittedly, in the plaint the plaintiffs had expressly reserved their right to challenge the purported approvals granted in connection with the defendants' drugs and modify the plaint and to enlarge the reliefs sought against the defendants. After the filing of the suit, along with the copies of the purported approvals issued in connection with the impugned drug, the documents were also provided by defendant No. 2 to the plaintiffs. In view of the additional information, the application was filed. The contention of the plaintiffs is that these are the subsequent developments which have come to the knowledge of the plaintiffs after filing of the suit. It is stated that the defendants No. 2 to 4 have commercially launched the products after filing of the suit. The amendments were sought in various paras of the plaint, the details of which are given in para 3 of the application. It is submitted by the plaintiffs in the application that the said amendments are necessary for the purpose of deciding the real question of controversy between the parties and no prejudice would be caused if the same is allowed.

33. Reply to this application was been filed by the defendants. It was contended in the reply that the said amendments cannot be allowed, as one of the reliefs for declaration sought in the amendment application may give rise to alternative remedy prescribed under the Drug Rules, 1945. This Court has no jurisdiction to entertain the relief for declaration that the defendants' drugs have not been tested and/or approved as a bio-similar drug under the applicable law. The plaintiffs have an alternative remedy. The application was also opposed on the ground that the allegations of infringement of copyright are not sustainable on various reasons mentioned in para 7 of the reply. Besides, it is stated that the present amendment is not maintainable as the same is an abuse of the process of the law and the same deserves to be dismissed.

34. In the second application for amendment filed by the plaintiffs being I.A. No. 11224/2015, in para 4 thereof, it is stated that during the pendency of the suit, defendant No. 2 has obtained approval for additional indications, namely, HER2+ early breast cancer and HER2+ metastatic gastric cancer. Learned counsel for the plaintiffs in support of his submissions has referred the order dated 28th May, 2015.

The said fact has not been denied by the learned counsel for defendant No. 2 that they have already obtained the approval from defendant No. 1 with regard to the additional indications. They have also not denied the fact that their

application for approval of specimen of the carton, labels and package insert is still pending for proposed additional indications. Learned counsel for defendant No. 1 has admitted the said position. He has, in fact, on 28th May, 2015 as well as on 1st July, 2015 has informed that the application for such approval for specimen of the carton, labels and package insert will be considered as per its own merits and as per the rules and regulations. He submits that the same will be considered after going through the pleadings of the parties and the orders passed by the Court from time to time.

35. The fact of the matter is that the approval of additional indications on drug was granted to defendant No. 2. However, the approval of specimen of the carton, labels and package insert for the proposed additional indications is yet to be considered by defendant No. 1. The case of the plaintiffs is that for the purpose of determining the real question of controversy between the parties, the amendment of the plaint in terms of the proposed amendments as set out in this application is necessary. It is submitted that the information given in the said applications is subsequent event which is not denied by the defendants, as the application for approval of additional indications on drug was filed in the month of November, 2014 when the matter was being heard on merits in the interim applications therefore no prejudice would be caused to the defendants if the subsequent events be brought on record by allowing the application, otherwise grave injustice, harm and loss would be caused to the plaintiffs.

36. The applications are opposed by two sets of the defendants, i.e. defendant No. 2 and defendants No. 3 and 4 on the ground that the plaintiffs are seeking to challenge the very approval granted by defendant No. 1 and if the same is allowed, that would change the nature of the case. It is stated that in the original plaint filed on 4th February, 2014, the plaintiffs chose not to challenge the approvals granted by defendant No. 1 and even, in the order dated 5th February, 2014 the Court did not grant ad-interim injunction with respect to the sale or marketing or distribution of the defendant No. 2's drug in question. The only restraint on the said defendant is with respect to making use of the plaintiffs' trademarks and references as prayed for. There is also no restraint on the defendants from obtaining the approvals of additional indications as required under the law. It was also stated in the reply that the reading of both the applications for amendment would show that the plaintiffs are belatedly attempting to extend the scope of the plaint by changing the nature and character of the suit. Therefore, both the applications are liable to be dismissed. It is further stated in the reply that such relief of declaration would not be agitated before this Court in view of the alternative remedy prescribed under the Drug Rules, 1945 and it imposes bar on the jurisdiction of this Court. The present amendments would go beyond the scope of the original plaint, therefore, the same cannot be allowed.

37. It is not in dispute that by virtue of the amendments, the plaintiffs are seeking relief of declaration by challenging the approval granted to defendant No.

2 by defendant No. 1. As far as the other amendments are concerned, which are subsequent events in nature, the same have occurred after filing of the suit about the application for additional indications. The same have to be considered by the Court at the time of deciding the interim applications as during the course of the arguments, the defendant No. 2 did not point out the said fact either to the Court or to the other side. As and when it has come to the notice of the plaintiffs, the fresh application has been filed.

38. Learned counsel for the defendants have admitted before the Court that the approval for additional indications of product proposed was granted and he will produce the approval of the carton, labels and package insert if the same is granted by defendant No. 1. It is also not in dispute that as far as the relief of declaration is concerned, all the counsel appearing on behalf of the defendants have already argued before the Court at the time of making their submissions in the interim applications to the effect that the suit filed by the plaintiffs is not maintainable, as the plaintiffs have an alternative remedy to challenge the said approval as per the Drugs Rules, 1945. The said submissions have been noticed by the Court and the same is to be answered by this Court when the interim applications are decided.

39. The other objection raised by the defendants is that in any case the defendants No. 2 to 4 cannot be restrained from using the drug under additional indications for which the approval for specimen of the carton, labels and package insert is granted, as earlier by order dated 5th February, 2014 there was no interim order in this regard.

40. Mr. Sandeep Sethi, learned Senior counsel for the plaintiffs has referred paras 15, 16 and 17 of the order dated 14th February, 2014 passed by this Court; the same are reproduced here below:-

"15. Arguments are advanced by defendants No. 2 to 4 irrespective of the fact that even otherwise insert being used by the defendants is not protectable in law by the plaintiffs. The defendants have infringed the rights of the plaintiffs in any manner.

16. At present, there are two versions of the parties which are contrary to each other. The defendant No. 1 is present who has or has not granted the approval of purchase insert. No opportunity has been granted to the plaintiffs to file replies to these applications. Thus, in case the defendant No. 2 has already obtained the approval of package insert in question, then it is entitled to use the same till the next date of hearing, in other case, the remaining part of the interim order for which the defendants sought modification shall continue.

17. Under these circumstances, without deciding anything on merit with regard to the arguments addressed by both the parties, the plaintiffs are granted ten days" time to file the reply to the appeals which are to be treated as applications under Order XXXIX Rule 4 CPC as this Court feels that final order in this regard would be passed when the exact picture comes into light."

41. Counsel submitted that the Court in para 16 of the order has specifically observed that in case the defendant No. 2 has already obtained the approval of package insert in question, then it is entitled to use the same and in other case, the remaining part of the interim order would continue. The position however at this stage is different because of the reason that the approval of the carton, labels and package insert is still pending for consideration. Thus, no harm would be caused if the defendants may await the order to be passed in the interim applications in the matter and till such time, they may be asked to not to launch the product for additional indications in the market.

42. The submission of the learned counsel for the defendants is that the defendants have not indulged in any misrepresentation nor they have adopted any trademark or sign of the plaintiffs. The plaintiffs are not seeking a restraint on use of their data by the defendants No. 2 to 4 for submission to the Drug Regulatory Authority for the purpose of approval. Therefore, the defendants are entitled to use the published data for the purpose of approval. Thus, the defendants would be entitled to launch the product after approval for carton, label and package insert for their product for additional indications immediately. It is submitted that the plaintiffs have not been able to satisfy the Court as to whether the civil suit is barred in view of the provisions of the Drugs and Cosmetics Act, 1940 and Drug Rules, 1945. It is not denied by the defendants that the substantial arguments on this issue have already been addressed by both parties and the matter is at the stage of rejoinder arguments.

43. As far as the amendments sought in the above said two applications are concerned, the same if any to be allowed or refused depends upon the facts of the case in hand while following the laws laid down in large number of cases. As a general rule the court should decline amendments if a fresh suit on the amended claims would be barred on the date of application. Merit or demerit of his contention cannot be determined at this stage. A party may have a weak case on merit but fact remains that the merit is not to be considered while deciding the application for amendment. Therefore, in normal case, the amendment is liable to be allowed if a valid case for amendment is made out in order to decide the real dispute between the parties.

44. The pleadings in the amendment applications are yet to be completed, the plaintiffs are granted two weeks time to file the rejoinder. The defendants have already addressed their submissions on their objection with regard to incorporation of relief of declaration in the amendment application. Their objection in this regard has to be considered when the interim applications are decided. However, as far as the subsequent events are concerned which have occurred during the course of arguments, the same shall be considered as per the details mentioned in the applications at the time of deciding the interim applications.

45. With regard to interim application sought by the plaintiffs in view of subsequent events, admittedly the approval for additional indications, i.e. early

breast cancer and metastatic gastric cancer for specimen of carton, labels and package insert is still sub-judice. Mr. Sanjay Jain, ASG has assured the Court that the request for approval would be considered as per rules and regulations and as per routine procedure and while considering the same, defendant No. 1 will also examine the orders passed by this Court. Under these circumstances, the directions are passed that in case defendant No. 2 gets approval from defendant No. 1 for specimen of the carton, labels and package insert for the proposed additional indications, copy of the same shall be filed along with an affidavit within one week from the date of approval. Under such situation, the defendant No. 2 shall also inform the Court as well as the other side two weeks in advance if after such approval they have any intention to launch the products for the additional indications, i.e. early breast cancer and metastatic gastric cancer. The prayer of the plaintiffs' application would be considered at that stage.

46. With these directions, the remaining applications be listed before Court on 13th August, 2015 along with other interim applications being I.A. No. 2371/2014 (under Order XXXIX Rules 1 and 2 CPC filed by plaintiffs), I.A. No. 2988/2014 (under Order XXXIX Rule 4 CPC, by defendants No. 3 and 4) and I.A. No. 2990/2014 (u/o XXXIX Rule 4 CPC filed by defendant No. 2). The defendants would also be given opportunity to make their submissions on the issue of subsequent events.

I.A. No. 12862/2015 (u/o XXXIX R. 1 and 2 CPC, by D-3 and 4)

47. The abovementioned application has been filed by the defendants No. 3 and 4 under Order XXXIX Rules 1 and 2 read with Section 151 CPC seeking ad-interim injunction restraining the plaintiffs from issuing letters, press releases, publications or any other material in any form or manner and further directions to the plaintiffs to withdraw the letter dated 10th June, 2015 issued to the Drugs Controller General of India/defendant No. 1 and/or any other authority whomsoever in respect of the subject matter of the suit.

48. Issue notice to the plaintiffs. Mr. Nayar, learned Senior counsel appearing on behalf of the plaintiffs submits that as far as issuance of letter dated 10th June, 2015 is concerned, the plaintiffs have merely informed defendant No. 1 about the interim orders passed against the defendants. They have no intention whatsoever to interfere with the functions of defendant No. 1. He further submits that the approval be considered by defendant No. 1 as per its own merits and as per the interim orders as well as the pleadings of the parties. Defendant No. 1 has already made the statement on the last date that the approval would be considered on the application filed by defendant No. 2 as per rules and regulations and routine procedure. Therefore, in view of the said statement made by the learned Senior counsel appearing on behalf of the plaintiffs, let reply be filed within two weeks.

49. List this application on the date fixed. The same will also be decided along with the interim applications.