

(2022) 03 DEL CK 0023

In the Delhi High Court

Case No : Civil Suit (COMM) No. 535 Of 2021

Sun Pharma Laboratories Ltd

APPELLANT

Vs

VHM (Varsha Health Medicine) & Ors

RESPONDENT

Date of Decision : 02-03-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 89, Order 23 Rule 3

Citation : (2022) 03 DEL CK 0023

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Sachin Gupta, Jasleen Kaur, Pratyush Rao, Snehal Singh, Swati Meenu, Arun Kumar

Judgement

Mukta Gupta, J

IA No.3370/2022 (under Order XXIII Rule 3 CPC)

1. By this application under Order XXIII Rule 3 CPC, the plaintiff and the defendants, namely, VHM (Varsha Health Medicine), Krypton Pharmaceuticals and MBS Formulation impleaded as defendant nos.1, 2 and 3 seek decree of the suit in terms of the settlement arrived at between the parties.

2. Taking on record the settlement, application is disposed of.

CS(COMM.) 535/2021

1. Plaintiff and defendant nos.1, 2 and 3 have entered into a settlement on the following terms and conditions as noted in para 2 of the IA No.3370/2022 are as under:

"I The Defendants above named hereby recognizes the Plaintiff to be the proprietor of the trade mark PANTOCID having the exclusive right to the use of the aforementioned trade mark in respect of medicinal and pharmaceutical products;

- ii. The Defendants undertake to refrain themselves, their proprietors/partners, its assignees in business, its distributors, dealers, stockists, retailers/chemists, servants and agents from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal preparations under the impugned mark PANTOCIDE or any other trade mark as may be deceptively similar to the Plaintiff's trade mark PANTOCID amounting to infringement of registered trade mark under no.791979;
- iii. The Defendants state that there are no existing stocks of finished products under the impugned mark PANTOCIDE available with them;
- iv. The Defendants state that they have destroyed all the stationery, packaging, promotional and publicity material and labels under the impugned mark;
- v. The Defendant No.2 & 3 confirm that they shall destroy the packaging material which was seized by the Ld. Local Commissioner during the execution of the local commission on 30.10.2021, in the presence of the Plaintiff's representative over video conferencing;
- vi. All batch details of the impugned product under the impugned mark PANTOCIDE and its variants are disclosed as under:

Impugned Product

Batch No.

Mfg. date

PANTOCIDE-L

MFC-081919

26.08.2019

PANTOCIDE-DSR

MFC-012049

20.05.2020

PANTOCIDE

MFC-02-04

15.02.2021

MFC-02-04

13.02.2021

MFC-051909

08.07.2019

MFC-102067

05.10.2020
MFC-121947
06.01.2020
MFC-092048
09.09.2020
9897
08.07.2019
19 I-05
07.10.2019
19 I-23
09.10.2019
MFC-05-04
14.05.2021
MFC-06-01
25.06.2021
21 F-07
25.06.2021
MFC-06-01
25.06.2021
MFC-05-04
08.05.2021
MFC-03-12
06.04.2021
MFC-03-12
06.04.2021
MFC-08-11
23.06.2021

vii. The Defendants confirm that they shall not file any application for registration of any trade mark, which is deceptively similar to the Plaintiff's trade mark PANTOCID and will not challenge the rights of the Plaintiff in its trade mark/labels either directly or indirectly;

viii. The Defendants have computed the profits made by them from the sales of medicine under the impugned mark, which comes to INR 4.59 lakhs. The Defendant has deposited the said amount as token costs by way of a demand draft under no.000758 dated 05.01.2022 with the Plaintiff;

ix. The Defendants hereby agree that the Plaintiff shall not be liable in any manner whatsoever, whether legal or otherwise arising from the goods provided by the Defendants under the impugned mark and the Defendants shall indemnify and hold harmless the Plaintiff from any cost or claim of damages arising from it;

x. The abovementioned undertakings have been tendered by Sh. Manoj Kumar Sah, Authorized Signatory of all the Defendants and the same shall be binding on the Defendants, their assignees in business, franchisees, licensees, distributors, dealers and agents for all times to come."

2. The settlement agreement is duly signed by the constituted attorney of the plaintiff as also the authorized signatory of the defendants Mr Manoj Kumar Sah. The constituted attorney of the plaintiff has also filed the plaint on behalf of the plaintiff and his affidavits and necessary authorization are already on record. Authorization letters in favour of Mr Manoj Kumar Sah on behalf of the defendant nos.1, 2 and 3 have been placed on record along with the vakalatnama of the learned counsel for the defendant. Consequently, the suit is decreed in terms of the settlement arrived at between the parties as also the prayer clauses (a) and (b) of the plaint.

3. Learned counsel for the plaintiff submits that since the settlement in the suit was arrived at the initial stage itself, as summons in the suit were issued on 27th October, 2021 and on the next date before this Court, the parties stated that they have settled the matter and sought some time to place on record the terms of settlement, full court fee be returned to the plaintiff in terms of the decision of the Hon'ble Supreme Court reported as (2021) 3 SCC 560 High Court of Judicature at Madras Vs. M. C. Subramaniam & Ors.

4. The Hon'ble Supreme Court in the above-noted decision held that though in strict terms when settlement is arrived at between the parties by not adopting a mode prescribed under Section 89 CPC, the party may not be entitled to full court fee, however, Section 89 CPC has to be given a liberal interpretation and thus in cases where settlement is arrived at out of court, the full court fee be refunded. It was held:

"23. We find ourselves in agreement with the approach taken by the High Courts in the decisions stated supra. The purpose of Section 69-A is to reward parties who have chosen to withdraw their litigations in favour of more conciliatory dispute settlement mechanisms, thus saving the time and resources of the Court, by enabling them to claim refund of the court fees deposited by them. Such refund of court fee, though it may not be connected to the substance of the dispute between the parties, is certainly an ancillary economic incentive for pushing them towards exploring alternative methods of dispute settlement. As

the Karnataka High Court has rightly observed in Kamalamma, the parties who have agreed to settle their disputes without requiring judicial intervention Under Section 89 CPC are even more deserving of this benefit. This is because by choosing to resolve their claims themselves, they have saved the State of the logistical hassle of arranging for a third-party institution to settle the dispute. Though arbitration and mediation are certainly salutary dispute resolution mechanisms, we also find that the importance of private amicable negotiation between the parties cannot be understated. In our view, there is no justifiable reason why Section 69-A should only incentivise the methods of out-of-court settlement stated in Section 89 CPC and afford step-brotherly treatment to other methods availed of by the parties.

24. Admittedly, there may be situations wherein the parties have after the course of a long-drawn trial, or multiple frivolous litigations, approached the Court seeking refund of court fees in the guise of having settled their disputes. In such cases, the Court may, having regard to the previous conduct of the parties and the principles of equity, refuse to grant relief under the relevant rules pertaining to court fees. However, we do not find the present case as being of such nature.

25. Thus, even though a strict construction of the terms of Section 89 CPC and Section 69-A of the 1955 Act may not encompass such private negotiations and settlements between the parties, we emphasize that the participants in such settlements will be entitled to the same benefits as those who have been referred to explore alternate dispute settlement methods Under Section 89 CPC. Indeed, we find it puzzling that the petitioner should be so vehemently opposed to granting such benefit. Though the Registry/State Government will be losing a one-time court fee in the short term, they will be saved the expense and opportunity cost of managing an endless cycle of litigation in the long term. It is therefore in their own interest to allow the Respondent No. 1's claim."

5. Consequently, the suit is decreed in terms of the settlement noted above. Decree sheet be prepared in terms of the settlement arrived at between the parties.

6. Registry is directed to issue a certificate releasing full court fee to the authorized attorney of the plaintiff.

IA No.13961/2021

1. Application is disposed of as infructuous.
2. Order be uploaded on the website of this Court.