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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 459/2022 & I.A. 739/2023 (for condonation of delay of 30 days in WS) & I.A. 740/2023 (u/S 151 of CPC)**

SUN PHARMACEUTICAL INDUSTRIES LTD. Plaintiff

Through: Mr.Sachin Gupta, Ms.Swati Meena,
Ms.Yushi Agrawal, Mr.Manan
Mandal and Mr.Rohit Pradhan,
Advocates.

versus

VENSAT BIO & ORS. Defendants

Through: Mr.Vaibhav Gupta, Advocate for D-3.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **23.05.2023**

CS(COMM) 459/2022 & I.A. 1064/2023 (O-IX R-13 seeking set-aside ex-parte judgment dated 19.12.2022)

1. The present application has been filed on behalf of the defendant no.3 under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC) seeking to set-aside the *ex parte* judgment and decree passed by this court on 19th December, 2022.

2. The defendant no.3 had entered appearance in the matter on 13th October, 2022 through its counsel, Mr. Vaibhav Gupta. Thereafter, the matter was posted for 9th November, 2022, on which date also, Mr. Vaibhav Gupta appeared on behalf of the defendant no.3 and sought time to file written statement and the matter was adjourned to 19th December, 2022. In the interregnum, the matter was settled between the plaintiff and defendants



no. 1 and 2 and upon a joint application under Order XXIII Rule 3 of the CPC being filed, the suit was decreed against the defendants no. 1 and 2 on 28th November, 2022.

3. It is the case of the defendant no.3 that Mr. Vaibhav Gupta could not appear on 19th December, 2022 on account of illness.

4. A reply has been filed on behalf of the plaintiff opposing the present application, in which it is stated that till 19th December, 2022, no *vakalatnama* had been filed on behalf of the defendant no.3 and nor had the written statement been filed.

5. Having heard the counsel for the parties, I am of the view that the defendant no.3 has shown sufficient cause for not appearing on 19th December, 2022. It is also a matter of record that on the previous two dates, the counsel had appeared on behalf of the defendant no.3. On 28th November 2022, the defendant no.3 was not expected to appear as on the said date the application under Order XXIII Rule 3 of the CPC filed by the plaintiff and defendants no. 1 and 2 was listed.

6. Accordingly, the application is allowed and the *ex parte* judgment and decree passed by this Court on 19th December, 2022 is set aside.

CS(COMM) 459/2022 & I.A.10340/2022 (O.XXXIX R.1 & 2 of CPC)

7. In view of the fact that the *ex parte* judgment and decree passed by this Court on 19th December, 2022 being set aside, the suit along with I.A. 10340/2022 stands revived.

8. From the plaint, it can be seen that the plaintiff started business of marketing pharmaceutical products under the trade name 'SUN/ SUN PHARMA/ SUN PHARMACEUTICALS' in the year 1978. The trade name 'SUN' appears on all of the plaintiff's products, packaging, promotional



materials and stationery and even on the office buildings of the plaintiff. It markets drugs and formulations in over 150 countries of the world. The plaintiff is ranked as no.1 pharmaceutical company in India in a total of 11 specialities and is the world's 4th largest generic pharmaceutical company.

9. The plaintiff has more than 52 registrations in India for the trade mark/ label 'SUN/ SUN PHARMA/ SUN PHARMACEUTICALS' in various classes. The earliest registration was granted in favour of the plaintiff in the year 1983. The plaintiff also has more than 143 international registrations for the 'SUN' formative marks in different classes in various countries including U.S.A and European Union, and various 'SUN' formative domain name registrations used internationally. The earliest domain name registration was granted in the year 1997.

10. The plaintiff has acquired vast goodwill and reputation in respect of its marks 'SUN/ SUN PHARMA/ SUN PHARMACEUTICALS'. The plaintiff has also placed on record statement of sales for the period 1992 to 2021 under the trade name 'SUN/ SUN PHARMA/ SUN PHARMACEUTICALS'. The annual sales turnover of the plaintiff in the financial year 2020-2021 is to the tune of Rs. 33,139 crores. The plaintiff has also incurred expenditure of Rs. 750 Crores in the advertisements and promotions of its products in the corresponding year.

11. The plaintiff has been vigilantly protecting its statutory and common law rights in the trade name 'SUN/ SUN PHARMA/ SUN PHARMACEUTICALS' and has secured injunction and rectification orders against various parties using trade mark/trade name deceptively similar to that of the plaintiff's trade mark/trade name.

12. It is the case of the plaintiff that the defendant no.3 is engaged in the



business of manufacturing of medicines bearing the impugned mark SPORTEK under the impugned trade name ORISON/ORISON PHARMA/ORISON PHARMACEUTICALS. Further the attention of the Court has been drawn to page 10 of the plaintiff's documents, which shows that the medicines are being manufactured by the defendant no.3 bearing the mark SPORTEK under the trade name ORISON PHARMA/ORISON PHARMACEUTICALS.

13. A *prima facie* case is made out on behalf of the plaintiff. Balance of convenience is in favour of the plaintiff. Irreparable harm would be caused not only to the plaintiff but also to the public if an *ex parte* ad interim injunction as sought is not granted in favour of the plaintiff.

14. Accordingly, the defendant no.3, their directors, partners, proprietors, their assigns in business, licensees, franchisee, distributors, dealers, stockists, retailers, chemists, are restrained from using the mark SPORTEK and the trade name ORISON/ ORISON PHARMA/ ORISON PHARMACEUTICALS or any other trade mark/ trade name as may be deceptively similar to the plaintiff's trade marks/trade name SPORIDEX/ SUN/ SUN PHARMA/ SUN PHARMACEUTICALS, amounting to infringement of the plaintiff's registered trademarks.

15. List on 10th August, 2023.

AMIT BANSAL, J.

MAY 23, 2023

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