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

+ **CS(COMM) 318/2018**

UNITED PHOSPHORUS LIMITED Plaintiff

Through: Ms. H.Rajeshwari & Mr. Tahir. A.J.
Advocates

versus

AJAY GARG AND ANOTHER Defendant

Through: Ms. Anuradha Mukherjee & Ms.
Pallavi Sigh Advocates for D-2

CORAM:

**SH. RAKESH PANDIT (DHJS), JOINT REGISTRAR
(JUDICIAL)**

ORDER

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17.09.2018

**Proceedings from 11:58 am to 12:55 pm & 02:40
pm to 04:30 pm**

**Evidence recorded from 12:00 pm to 12:55 pm
& 02:40 pm to 04: 25 pm**

Number of pages 15

Though the evidence is being recorded before the learned Local Commissioner, however, one official from the Patent Office, Mumbai came to the Court. In view of order passed on 21.08.2018, he is examined today as PW-2.

The witness/PW-2 Dr. Suhas Kulkarni has been examined and discharged.



IA No. 11808/2018 (By plaintiff).

Defendant no.2 has filed the reply.

Arguments heard.

The plaintiff has relied one judgment titled *F. Hoffmann La-Roche Ltd. & Ors. v. Natco Pharma Limited & Ors* and the defendant no.2 has also relied on one judgment titled *Polyfer Ltd. v. A.N. Goenka & Ors. (2016), 159 DRJ 664.*

Heard.

I have gone through an earlier order dated 02.05.2018. As per that order also some documents of the plaintiff were taken on record in which plaintiff has claimed that those documents are already on record and no new documents have been filed or relied by the witness/PW-2 Jagdish Prakash Jadhav.

Today it is admitted that the documents mentioned in the present application are new documents and were never filed earlier.

Learned counsel for the plaintiff argued that in the judgment relied by the plaintiff, the documents were placed on record at the stage of evidence and similarly plaintiff's documents be also taken on record.

Opposed by learned counsel for the defendant no.2 on the ground that



plaintiff documents had already been taken on record for eight times. The matter is listed for evidence. No explanation has been given as to why they have not been filed earlier despite being in 'public domain'.

As far as the judgment relied by Learned counsel for the plaintiff is concerned, the same relates to report of an expert witness who came to depose before the court and that report was not part of record earlier, which is not the case here. As per the plaintiff itself, it had taken the plea in the written statement to the counter claim but not filed these documents earlier when there was opportunity of at least more than 7 times. No explanation is given as to why those were not filed. Only explanation is that these documents are in public domain and supports scientific theories.

As far as the stage of filing the documents is concerned, trial is already going on. No explanation given for not filing these documents earlier. Even vide order dated 02.05.2018 the counsel had given a statement that no new documents have been filed in the evidence of PW-2 i.e. Jagdish Prakash Jadhav. So no ground exists. Accordingly, the application is dismissed.

Documents relied in the present application shall not form part of the record.



As per the parties the matter is listed for cross examination of PW Jagdish Prakash Jadhav on 19.09.2019 before the learned Local Commissioner.

The matter be placed before the Hon'ble Court for further directions on the date already fixed.

**SH. RAKESH PANDIT (DHJS)
JOINT REGISTRAR (JUDICIAL)**

**SEPTEMBER 17, 2018
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