

Chief Justice's Court

Case :- FIRST APPEAL FROM ORDER DEFECTIVE No. - 21 of 2025

Appellant :- Jamp India Pharmaceuticals Private Limited

Respondent :- Jubilant Generics Ltd And 3 Others

Counsel for Appellant :- Shashi Nandan (Sr. Adv.), Anup Shukla, Devansh Misra, Raghuvansh Misra, Srinivas Chatti, Sushil Jethmalani, Shivang

Counsel for Respondent :- Ankit Prakash, Rahul Agarwal

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

1. Counsel for the respondents prays for time to complete his instructions in the matter.
2. Time prayed for is allowed.
3. List on **23.01.2025** as fresh.

Order Date :- 8.1.2025

N.S.Rathour/RK

(Vikas Budhwar, J)

(Arun Bhansali, CJ)

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Counsel for Appellant :- Shashi Nandan (Sr.Adv.) with Raghuvansh Misra, Anup Shukla, Devansh Misra, Sushil Jethamelani

Counsel for Respondent :- Ankit Prakash, Rahul Agarwal, Vedant Agarwal

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

1. This appeal is directed against the order dated 07.11.2024 passed by Commercial Court No. 2, Gautam Budhnagar whereby the application filed by the respondent-plaintiff under Order XXXIX Rule 1 and 2 C.P.C. has been allowed and the appellant and respondents no. 2 to 4 have been restrained from manufacturing the drugs as are mentioned in the product dossier, detailed in the plaint, its marketing, selling or allied purposes and they have further been restrained from sharing the product dossier available with them with any third party.

2. A suit was filed by the respondent no. 1-plaintiff against respondents no. 2, 3 and 4 and the appellant, *inter alia*, seeking reliefs in respect of the three products, mainly seeking a restraint from manufacturing and further transferring the restricted dossier and claiming damages.

3. Along with the suit, an application seeking injunction under Order XXXIX Rule 1 and 2 C.P.C. was filed. The Commercial Court, by its order dated 23.08.2024, granted ad-interim injunction

restraining the defendants from producing, manufacturing, distributing the said medicines.

4. An application under Order XXXIX Rule 4 C.P.C. came to be filed by the appellant seeking vacation of the *ex-parte* interim order. After the pleadings were exchanged between the parties, by the impugned judgment, the Commercial Court has finally decided the application under Order XXXIX Rule 1 and 2 C.P.C.

5. Learned counsel for the appellant made vehement submissions pertaining to the issues, as raised before the Commercial Court, in respect of the maintainability of the suit, the right claimed by the plaintiff qua the nature of drugs being manufactured, claiming the same to be generic and that besides *prima facie* case, the balance of convenience was in favour of the appellant and it was suffering irreparable injury, on account of grant of ad-interim injunction and now the injunction. Submissions were also made that despite making adequate submissions and material available on record, wholly cursory finding has been recorded without dealing with the issues raised and the material produced.

6. Learned counsel for the respondents, though attempted to support the order impugned on merits, failed to support the manner in which the order has been passed by the Commercial Court.

7. We have considered the submissions made by counsel for the parties and have perused the material available on record.

8. A perusal of the order passed by the Commercial Court indicates that after noticing the submissions made on behalf of the parties, the judgments cited, few purported admitted facts without reference to any document, and whereafter, distinguishing one of the judgments cited by the appellant, has granted the temporary injunction.

9. It is well settled that while deciding an application under Order XXXIX Rule 1 and 2 C.P.C., the Court is required to record its findings on prima facie case, balance of convenience and irreparable injury. Perusal of the order impugned indicates that not a word has been indicated by the Commercial Court regarding the existence of a prima facie case and further there is no reference, whatsoever, to the aspects of balance of convenience and irreparable injury. The order passed is wholly cursory and does not fulfill the settled requirements of dealing with an application under Order XXXIX Rule 1 and 2 C.P.C.

10. Looking to the nature of order, which has been passed, the Appellate Court has two alternatives, either to substitute its opinion in place of that of the Commercial Court by hearing the parties at length and/or remand the matter back to the Commercial Court for re-hearing the same and require it to decide the same based on the settled parameters. In case, the opinion, as expressed by the Commercial Court, is substituted by this Court, either of the parties would lose the important right of questioning the validity of the order passed by way of an appeal and in those circumstances, it would be appropriate that the matter is remanded back to the Commercial Court for re-hearing the matter on the application and pass a fresh order on the settled parameters.

11. Consequently, the appeal is partly allowed. The order dated 07.11.2024 passed by Commercial Court No. 2, Gautam Budh Nagar is set aside. The matter is remanded back to the Commercial Court to hear and decide the application under Order XXXIX Rule 1 and 2 C.P.C. filed by the plaintiff and the application filed under Order XXXIX Rule 4 C.P.C. by the appellant.

12. Looking to the fact that the pleadings etc. are already complete, the Commercial Court would hear the parties and decide

the applications within a period of four weeks from the date the parties appear before the Commercial Court. Both the parties, present before the Court, undertake that none of them would seek unnecessary adjournments before the Commercial Court. The ad-interim injunction, as granted by the Commercial Court on 23.08.2024, shall continue till the disposal of the application, as ordered hereinbefore. The parties in the first instance shall appear before the Commercial Court on 30.01.2025.

13. It is made clear that extension of ad-interim order, as granted by the Commercial Court on 23.08.2024 by this Court shall not be taken as expression of any opinion on the merits of the case and the Commercial Court shall decide the matter in accordance with law, without being influenced by the said aspect.

Order Date :- 23.1.2025

P.Sri./Rajesh

(Vikas Budhwar, J) (Arun Bhansali, CJ)