

In the Court of Incharge Commercial Court No-2, Gautam Buddh Nagar/

District Judge, Gautam Buddh Nagar

**PRESENT: AVNISH SAXENA, H.J.S.
J.O.CODE No. UP06527**

ORIGINAL SUIT NO. 370/2024

M/s Jubilant Generics Ltd Through its Authorized Representative,
Mr Sanjay Gupta Having its Registered Office at: 1 A, Sector 16-
A, District Gautam Buddh Nagar;

-----**Plaintiff;**

Versus

1. M/s Medreich Limited Having its Registered Office at: Medreich House No. 12/8, Saraswathi Ammal Street, Maruthi Seva Nagar, Bangalore, Karnataka, India 560033;
2. M/s V S International Private Limited Having its Registered Office at: A-204, Neelam Centre, Hind Cycle Road, Worli, Mumbai, Maharashtra India 400030;
3. M/s Gracure Pharmaceuticals Ltd Having its Registered Office at: 251-254, IInd Floor, DLF Tower 15 Shivaji Marg, West Delhi, New Delhi- 110015;
4. M/s Jamp India Pharmaceuticals Private Limited Having its Registered Office at: 1201 to 1204 & 1207 to 1212, 12th Floor, Navratna Corporate Park, Ambli Bopal Road, Ahmedabad, Gujarat, India- 380058;

-----**Defendants;**

Order

1. The learned counsel for the plaintiff, defendant no. 1 to 4 have been heard on application under Order 39 Rule 1 CPC alongwith application under Order 39 Rule 4 CPC and perused the record.
2. The brief conspectus of the case shun unnecessary details is such that M/s Jubilant Generics Ltd has instituted a commercial suit on 23.08.2024 against M/s Medreich Limited, M/s V S International Private Limited, M/s Gracure Pharmaceuticals Ltd, M/s Jamp India Pharmaceuticals Private Limited with the averment that the plaintiff had entered into an agreement with M/s Jamp Pharmaceuticals corporation, a Canadian corporation having it's principal place of business at 1380 Newton Street, Suite 203, Boucherville, Quebec Canada for use, manufacture and marketing of three tablets namely Losartan, Amlodipine, Citalopram in the product dossier, the formula has been found after incurring huge expenses and years of research conducted by the plaintiff for which a mutual confidentiality and non-disclosure agreement has been entered between the plaintiff and Jamp Canada. It is pertinent to point out here that an arbitration dispute is already continuing between the plaintiff and Jamp Canada at Canada [As has been place during argument before the Court]. The cause of action accrued to the plaintiff against the defendant for institution of the suit when the defendant no. 4 and Indian subsidiary of Jemp Canada had allegedly breached the

confidentiality of product dossier and handed over to defendant no. 1 to 3. Hence, the suit for a decree of permanent injunction to restrain defendant no. 1 to 4 their promoters, shareholders, directors, officers, servant, employees or others in capacity of principal or agent from unauthorizedly using the right protected dossier of the plaintiff. Further, to restrain the manufacturing and further transfer of the restricted dossier and damages. The plaintiff further prayed for ex parte at interim temporary injunction to restrain the defendants from producing, manufacture, distribution and export the said medicines.

3. The learned Court has passed the ad-interim temporary injunction ex parte under Order 39 Rule 1 and 2 CPC on 23.08.2024 restraining the defendants from using the product dossier in manufacture, distribution and export of the medicines.

4. The defendants no. 1 to 3 have filed three separate affidavits for limited purpose disclosing identical fact in paragraph 2 of the affidavit submitted by defendant no. 1 is reiterated underneath:

“2. That the present affidavit is being filed for the limited purpose of placing on record the fact that the product dossier in relation to **Citalopram 10 Mg, 20 Mg and 40 Mg** (product) as provided by Jamp Pharmaceuticals Corporation was used by this defendant only to manufacture the said product exclusively for Jamp Pharmaceuticals for distribution in the territory of Canada {Defendant No.1}”.

5. In the same way defendant no. 2 is manufacturing Amlodipine 5 Mg and 10 Mg and defendant no. 3 is manufacturing Losartan 25 Mg, 50 Mg and 100 MG. Rest of the statement in paragraph is identical.
6. Defendant no. 4 has filed written submissions against the order specifying that the suit is not maintainable as the plaintiff has invoked Section 62 of the Copy Right Act, 1957 and the existence of copy right over the product dossier is itself triable issue for which the Court has got no territorial jurisdiction of the matter and the Indian law is not applicable in the matter because of clause 15.11 and 15.12 of the non exclusive agreement for license, supply and distribution of pharmaceutical product and governed by the law of Quebec, Canada. It is further stated that the suit is also barred by the provision of Arbitration Law because of the arbitration clause specifically provides the arbitration to be governed by the law applicable at Canada. It is further stated that the material fact pertaining to arbitration proceeding between the plaintiff and Jamp Pharma, Canada is continuing due to which this Court does not have jurisdiction to entertain the suit or to pass any type of the order restraining the defendant. It is also stated that no prima facie case subsist in favour of plaintiff, the balance of convenience does not lie in favour of plaintiff. On the contrary, it is in favour of defendant and no irreparable loss has been cause to the plaintiff as the plaintiff himself has prayed for

damages. Lastly, it is stated that neither the product dossier has been transferred or shared with any of the companies in India except defendant no. 1 to 3 and for a limited purpose of manufacture of drugs for exporting it to Canada. It is on this pretext that an application has been moved with prayer that the exparte ad interim temporary injunction granted by the Court is to be vacated.

7. This court while reproducing the pleadings exchange by either parties which is voluminous did not found it cogent and necessary to reproduce every minute details in respect to the product dossier; the agreement entered into between the plaintiff and Jamp Pharma, Canada; the license issued to the plaintiff for the product dossier; and the arbitration proceeding continuing between the plaintiff and Jamp Pharma, Canada. As these details are required to be considered in trial of the case. In the present matter this Court is merely take into consideration whether on the basis of pleadings exchanged and the documents filed, whether the plaintiff is entitled for temporary injunction against the defendant for which the plaintiff has to establish three essential ingredients of prima facie case, balance of convenience and irreparable loss.

8. It is submitted by the learned counsel for the plaintiff that the product dossier which has been admitted by the defendant is the literally work of plaintiff as is defined under Section 2 (o) of the

Copy Right Act 1957. This product dossier is in respect to three medicines namely Amlodipine, Losartan, Citalopram. The chemical analysis of the same is the outcome of continuous research of the plaintiff. The plaintiff after the product research had entered into an agreement with Jamp Pharma, Canada that they could manufacture the drug as per product dossier, market and distribut only in Canada. This product dossier and the agreement clearly specify the confidentiality of the product dossier and the chemical formula of the medicines, so that the long drawn research work of the plaintiff may not be misused by unscrupulous. It is further stated that Jamp Pharma, Canada has violated the tenets of the agreement, which was known to the plaintiff only while contesting the arbitration proceedings between the Jamp Pharma, Canada and the plaintiff, that the Jamp Pharma, Canada through its Indian subsidiary defendant no. 4 had shared the product dossier with defendant no. 1 to 3. It is then that the plaintiff being apprehensive of the misuse of product dossier and breach of confidentiality that the research work of the plaintiff may be disclosed and shared in India. Hence, a suit for injunction has been filed for restraining the Indian subsidiary of the Jamp Pharma and the manufacture of the medicine from further manufacturing of the same and restrain to transfer the product dossier to other company, which may create loss to the plaintiff. It is further submitted that the plaintiff has got a legal

right to protect and preserve his research in respect to product dossier for the purpose of which the injunction suit has been filed and the plaintiff is entitled for interim injunction during the pendency of the suit. In substantiation of argument the learned counsel has relied on following case laws ***Eastern Book Company and Ors. Vs. D.B. Modak and Ors. [AIR (2008) SC 809 Supreme Court]; Salgunan N. and Ors. Vs. Ram Gopal Edara and Ors., [Manu/TN/9246/2019-Madras High Court]; Renaissance Hotel Holdings Inc. Vs. B. Vijaya Sai and Ors. [(2022) 5 SCC-1 Supreme Court]; Sai Chemicals Vs. Jai Chemical Works [Manu/UP/0130/2024 Allahabad High Court]; MMI Tabacco Pvt. Ltd. and Ors. Vs. Iftikhar Alam [Manu UP2401/2024 Allahabad High Court]; Marico Limited Vs K.L.F. Nirmal Industries Pvt. Ltd. [Manu/MH/5159/2023-Bombay High Court]; Asian Hotels North Ltd. VS. Yes Bank Ltd. and Ors. [Manu/DE/7046/2024 Delhi High Court]; Sanjay Soya Private Limited Vs. Narayani Trading Company [Manu/MH/0879/2021 Bombay High Court]; Nagpur Distilleries Pvt Ltd Vs Karmaveer Shankarrao Kale, Sahakari Sakhar Karkhana Limited, [MANU/MH/2340/2017- Bombay High Court].***

9. The learned counsel for defendant no. 4 has submitted that the product dossier for which the medical formula of three medicines are the generic drugs and not an invention therefore, the plaintiff

has got no right over the product detail. It is further submitted that the agreement entered into between the Jamp Pharma, Canada and plaintiff in respect to product dossier has never been violated by the defendant. It is only manufacturing order of the drug that has been given by Jamp Pharma, Canada to defendant no. 1 to 3. These drugs are only been manufactured in India and have been exported to Canada, hence, the tenets of the agreement has not been flouted because neither the product dossier has been shared by any of the defendant no. 1 to 3 for the purpose of manufacture and marked the drug in India but only the drugs are being manufactured for its export to Canada. It is therefore, stated that the *ex parte ad interim* injunction cannot be granted to the plaintiff against the defendant. It is further stated that there is error of jurisdiction of the case and for the same cause of action two actions are unsustainable, the first being between Jamp Pharma, Canada and plaintiff and another is the present suit. The learned counsel has consistently harping on the clause of license agreement and suppression of fact by the plaintiff in filing the plaint and therefore, submitted that the plaintiff has got no *prima facie* case, balance of convenience in his favour and no irreparable loss has been caused to the plaintiff if the *ad-interim* temporary injunction may not be granted, on the contrary, it is stated that medicines which have been manufactured by defendant no. 1 to 3 could not be exported to Canada which may

create wastage of medicine as these medicines are life saving drugs had an expiry date and will get expired with efflux of time. The learned counsel has relied on following case laws ***Oswal Fats and Oils Limited Vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and Others [(2010) 4 Supreme Court 728]***; ***State of Kerala Vs Union of India [(2024) 7 Supreme Court 183]***; ***Union of India And Others Vs Cipla Limited And Another [(2017) 5 Supreme Court Cases 262]***; ***K.K.Modi Vs K.N.Modi And Others [(1998) 3 Supreme Court Cases 573]***; ***Asma Lateef And Another Vs Shabbir Ahmad And Others [(2024) 4 Supreme Court Cases 696]***.

10. The learned counsel for defendant no. 1 to 3 have place their arguments in common that they are manufacturing the product as per the agreement between Jamp Pharma, Canada and the defendant, with the restriction that the drugs after being manufactured shall be exported to Canada and shall not be used in India. It is further submitted that no cause of action is accrued to the plaintiff against the defendant and it is the defendant no. 1 to 3 who shall suffer irreparable loss and damages if the restraint order continued. The learned counsel for defendant no. 1 to 3 have relied on the case of ***F. Hoffmann-La Roche Ltd and Ors Vs Cipla Limited, [148 (2008) DLT598]*** and drawn the attention of this Court towards paragraph 85 and 86 of the judgment where

irreparable loss, hardship has been discussed by Hon'ble the Supreme Court in respect to drugs which are life saving which shall not get wasted and observed a connect of the same with Article 21 of the Constitution of India, which provides that the right to life saving drug fall within the definition of right to life.

11. This Court has taken into consideration the rival submissions made by the parties and perused the record.

12. Following are the admitted facts, which are essential to be discussed and pointed out hereunder:

I- That the plaintiff is the author of product dossier for three drugs namely Losartan, which is for the patients with the ailment hypertension and left ventricular hypertrophy; Amlodipine, which is a drug for antihypertensive antianginal agent for mild to moderate essential hypertension; and Citalopram, as antidepressant drug.

II- The plaintiff had entered into an agreement for manufacture, market, distribution and sale the product in the territory of Canada.

III- The plaintiff and Jamp Pharma, Canada had also entered into a mutual confidentiality and non-disclosure agreement in respect to drug in the product dossier.

IV- The defendant no. 4 is a subsidiary Jamp Pharma, Canada at India.

V- The Jamp Pharma had entered into an agreement particularly with defendant no. 1, defendant no. 2 and defendant no. 3 for manufacture of specific drug as per the product dossier, in India.

13. It is the case of plaintiff that Jamp Pharma, Canada had entered into an agreement with defendant no. 1 to 3 and had also shared the product dossier, which is prima facie the literary work of the plaintiff acknowledge by the Jamp Pharma, Canada due to which the Jamp Pharma, Canada had entered into an agreement with the plaintiff and executed a confidentiality agreement. The confidentiality agreement and the agreement entered into between the plaintiff and Jamp Pharma, Canada and its tenets are subject to evidence but prima facie it shows that the Jamp Pharma, Canada is restricted to circulate the product dossier outside Canada, more particularly in India, which is prima facie revealed from the admitted fact.

14. This Court has taken into consideration the judgments relied on by the parties and law laid down thereunder and is of the opinion that to protect the product dossier pertaining to chemical formula of three life saving drugs, which is the outcome of extensive research of the plaintiff is required to be saved by the plaintiff and as the defendant no. 1 to 3 are manufacturing the drugs in India which has been prima facie restrained by the plaintiff, while entering in an agreement with Jamp Pharma is being

manufactured in India and the product dossier has been shared by Jamp Pharma, Canada.

15. Though the Jamp Pharmaceutical Canada has not been made party in the case but its subsidiary Jamp Pharmaceutical India has been made party and it is an admitted fact that three company defendant no. 1 to 3 are using the same product dossier for manufacturing of a particular mentioned in the product dossier.

16. The judgment relied on by defendant no. 1 to 3 of ***F. Hoffmann-La Roche Ltd (supra)*** speaks of Article 21 of Constitution of India, which is applicable in India and not for the drugs which are being exported to Canada.

17. So far as, the arbitration agreement with Jamp Pharma, Canada is concern. It is an admitted fact that the plaintiff is in agreement with Jamp Pharma, Canada but when the plaintiff has seen the product dossier being used in India, apparently in contravention to the agreement, hence, the suit has been instituted against the defendants, who are admittedly using the product dossier of the plaintiff for manufacturing of the drugs in India.

18. Therefore, this Court is of the view that the plaintiff has got prima facie case that he has right to protect his literary work being used without the knowledge of the plaintiff in India. The balance of convenience also lie in favour of the plaintiff because

the plaintiff has shared his product dossier in respect to three lives saving drugs with Jamp Pharma, Canada and in view of comparative hardship the plaintiff shall suffered the drain of his literary work, against its agreement. The plaintiff shall also suffered irreparable loss and injury which shall not be compensated in terms of damages if the technical know how of all the product is substantially, shared with other companies. Therefore, this Court is of the view that defendants shall be restraint from manufacturing the drugs as is mentioned in the product dossier, detailed in the plaint its marketing, selling or allied purposes and further restraint from sharing the product dossier available with them with any third party.

19. Hence, the application under order 39 Rule 1 and 2 CPC, application under Order 39 Rule 4 CPC moved by the parties and their respective objections are accordingly disposed of.

20. The order is effective till the disposal of the suit.

21. Fixed on 06.01.2025 for filing of written statement and framing of issues.

07.11.2024

**I/C Presiding Officer,
Commercial Court No. 2/
District Judge
Gautam Buddh Nagar**