

Delhi High Court - Orders

Novartis Ag vs Natco Pharma Limited & Anr on 19 January, 2023

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 50/2023

NOVARTIS AG

...
Through: Mr. Gopal Subramaniam, S
Advocate with Mr. Hemant
Ms. Mamta Rani Jha, Mr.
Bhushan, Ms. Hima Lawren
Ms. Ujwala Uppaluri, Mr.
Sharma, Ms. Garima Mehta
Mr. Abhay Tandon, Advoca

versus

NATCO PHARMA LIMITED & ANR.

..... Resp

Through: Mr. Amit Sibal, Senior Advocate
Mr. J. Sai Deepak, Advocate wit
Nataraj, Mr.Avinash
Mr.Ankur Vyas, Mr.Shashikant Ya
Ms. Harshita Agarwal, Mr.Rahul
Bhujbal, Ms. Garima Joshi and M
Saksham Dhingra, Advocates for
respondent No.1.
Mr. Harish Vaidyanathan, Advoca
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

% 19.01.2023 CM Appl. 2487/2023 (for exemption) in LPA 50/2023 Allowed, subject to all just exceptions. Accordingly, present application stands disposed of.

Signature Not Verified Digitally Signed By:JASWANT SINGH RAWAT Signing Date:20.01.2023 15:14:37 LPA 50/2023 & CM Appl. 2486/2023 Mr. Gopal Subramaniam, learned senior counsel for the appellant states that the learned Single Judge by way of the impugned order has set aside the learned Controller's order dated 14th December, 2022 granting patent being IN'414518 to the appellant on the ground that examination of the patent application for grant to the satisfaction of the Controller as well as pre-grant opposition proceedings initiated by a third party were not heard and decided together under Rule 55 of the Patent Rules, 2003. According to Mr.Subramaniam, the said interpretation is erroneous as Rule 55 only prescribes procedure for disposal of pre-grant opposition under Section 25(1) of the Patents Act, 1970, whereas the procedure for examination of patent applications is prescribed under Sections 14 and 15 of the Act read with Rules 24B, 28 and 28A. He further submits that the learned Single Judge has given a finding of violation of principle of

natural justice based on erroneous interpretation of Rule 55 which relates to procedure prescribed for disposal of pre-grant opposition under Section 25(1) and not examination under Sections 13, 14 and 15 for which procedure is prescribed under Rule 24B. In support of his submission, he relies upon the judgment of the learned Single Judge of this Court in W.P.(C)-IPD 15/2021 titled as Haryana Pesticides Manufacturers Association vs. Willowood Chemicals Limited.

Mr. Subramaniam emphasises that the impugned order was passed without directing and/or giving an opportunity to the Controller to file a counter affidavit. He also prays for a stay of the impugned order on the ground that the patent in question was granted after sixteen years of the Signature Not Verified Digitally Signed By:JASWANT SINGH RAWAT Signing Date:20.01.2023 15:14:37 application being filed and with only three and a half years of the term of the patent being left.

Per contra, Mr. Amit Sibal, learned senior counsel for respondent No.1 submits that in the present case there has not only been violation of principles of natural justice, but also of the statutory mandate as enshrined in Sections 14 and 15 and Rule 55 of the Patent Acts and Rules. He submits that the procedure adopted by the Controller of Patents is contrary to the procedure laid down by this Court in Best Agrolife Limited vs. Deputy Controller of Patents & Anr., 2022 SCC OnLine Del 1982 and Regents of the University of California vs. Union of India & Ors., 2019 SCC OnLine Del 8590 as well as the directions given by the learned Single Judge in inter party writ petition being W.P(C)-IPD 91/2021, Natco Pharma Limited vs. Union of India & Ors. dated 12th July, 2022.

Having heard learned senior counsel for the parties, this Court is of the prima facie view that issues as to whether once the pre-grant opposition is filed both examination and opposition proceedings stand merged and also whether any examination of the application can be undertaken by the Controller without issuance of a Notice to the opponent, arise for consideration in the present appeal. Accordingly, issue notice.

Mr. G. Nataraj, learned counsel accepts notice on behalf of the respondent No.1.

Mr. Harish Vaidyanathan, learned counsel accepts notice on behalf of the respondent No.2.

They pray for and are permitted to file their reply affidavits, if any, within a week.

Rejoinder affidavit, if any, be filed before the next date of hearing.

Signature Not Verified Digitally Signed By:JASWANT SINGH RAWAT Signing Date:20.01.2023 15:14:37 List the matter for hearing and disposal on 01st February, 2023. Till the next date of hearing, there shall be stay of the impugned judgment. However, the appellant shall maintain accounts of its expenses and sales.

The contesting parties shall file their written submissions not exceeding five pages before the next date of hearing.

The Controller is directed to produce its relevant original record wherein the order dated 14th December, 2022 has been passed in a sealed cover on the next date of hearing.

MANMOHAN, J SAURABH BANERJEE, J JANUARY 19, 2023 js Signature Not Verified Digitally
Signed By:JASWANT SINGH RAWAT Signing Date:20.01.2023 15:14:37