



\$~65

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ FAO(OS) (COMM) 236/2024, CM APPL. 60690/2024 , CM
APPL. 60691/2024, CM APPL. 60694/2024

F. HOFFMANN-LA ROCHE AG & ANR.Appellant

Through: Mr. Mukul Rohatgi, Mr.
Sandeep Sethi and Mr. Arvind
Nigam, Sr. Advs. with Mr.
Pravin Anand, Mr. Shrawan
Chopra, Ms. Archana Shankar,
Ms. Prachi Agarwal, Mr.
Achyut Tewari, Ms. N.
Mahavir, Ms. Riya Kumar, and
Mr. Agnish Aditya, Advocates.

versus

ZYDUS LIFESCIENCES LIMITEDRespondent

Through: Mr. Dushyant Dave, Mr. Rajiv
Nayar, Sr. Advs. with Ms
Bitika Sharma, Ms. Vrinda
Pathak, Ms. Sandhya Kukreti,
Ms. S.L. Soujanya, Mr.
Rajnish, Advocates

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **16.10.2024**
CM APPL. 60689/2024, CM APPL. 60693/2024, CM APPL.
60692/2024

Exemption allowed, subject to all just exceptions.

Applications shall stand disposed of.

CAV 514/2024

Since learned counsels for the caveator/respondents have



entered appearance, the caveat stands discharged.

FAO(OS) (COMM) 236/2024

1. This appeal is directed against the order dated 09 October 2024 in terms of which the learned Single Judge, while taking up for consideration I.A. 33509/2024 and which had alleged a violation of an undertaking and assurance tendered by the appellants, has proceeded to vacate the interim injunction dated 09 July 2024. The operative directions framed by the Court while disposing of that application read as follows:-

“38. Accordingly, the present application under *Order XXXIX rules 1 & 2 CPC* of the plaintiffs is dismissed in the above terms and the *ad interim* order dated 09.07.2024 passed by the predecessor bench is vacated.”

2. Of significance, however, are the following observations rendered by the learned Single Judge in the course of considering the aforementioned application:-

“9. Even otherwise, this Court is not sitting either in review or contempt or appeal over the said order dated 09.07.2024 and thus has to adjudicate upon the merits of the present application based on the records before it and arguments addressed in relation thereto. More so, since the said order dated 09.07.2024 was only “... .. *till the next date of hearing,*”.

10. When the earlier application being I.A. 4196/2024 came up for hearing before the predecessor bench on 23.02.2024, the circumstances were different from that when the present application was listed before the same bench on 09.07.2204 due to the subsequent developments. So, the yardstick applied by the predecessor bench, while passing the two order/s as aforesaid, was entirely different. Today, the situation is as such as it was prevalent on 23.02.2024 when the predecessor bench was adjudicating the earlier application without any ‘*claim mapping*’, the same is the situation in the present application.

xxx

xxx

xxx

35. The contention of the learned counsel/s for the defendant that the order dated 09.07.2204 deserves to be vacated since the



defendant was served with an advance copy of the present application late in the day and the same was taken up by the learned predecessor bench late in the day, and that too upon urgent mentioning, needs not to be gone into.

36. Lastly, the grant of relief of *ad interim-injunction* is of a discretionary nature, for grant of which the party like the plaintiffs herein have to satisfy a Court of law by setting out that it has a *prima facie case* in their favour with the *balance of convenience* also in their favour and that they are likely to suffer *irreparable loss and injury* as well as ‘*claim mapping*’ or like in a suit of patent infringement of the present nature, in terms of the aforesaid, the plaintiffs have been unable to make out any case in their favour and against the defendants in the absence thereof.”

3. As would be evident from the above, the learned Single Judge had at more than one place in the impugned order observed that it was not proposing to go into the validity of the order dated 09 July 2024. The Court categorically negated the prayer for vacation of that order observing that it need “*not to be gone into.*” However, while framing the penultimate direction, the Court has done exactly the opposite and vacated the order of 09 July 2024.

4. We find ourselves unable to sustain the aforesaid conclusions bearing in mind what the learned Single Judge himself had chosen to record in the paragraphs extracted above. Once the learned Single Judge had taken the position that the correctness or otherwise of 09 July 2024 was not being proposed to be gone into, we fail to comprehend or appreciate how the said order could have been ultimately vacated. We consequently have no hesitation in holding that the impugned order is rendered wholly unsustainable.

5. We accordingly allow the instant appeal and set aside the order of 09 October 2024. I.A. 33509/2024 shall consequently stand revived on the board of the learned Single Judge to be considered and examined afresh and in accordance with law.



6. We further leave it open to the appellant as well as the respondents to pursue such other interlocutory applications as may be pending consideration of the learned Single Judge.

7. Though needless to state we deem it appropriate to observe that this order shall not be construed as an expression of opinion on the merits of the injunction which had been granted or the prayer for its vacation as sought by the appellant.

8. Bearing in mind the fact that the application now stands revived, we prepone the date fixed in the main suit proceedings to 05.11.2024.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

OCTOBER 16, 2024/neha