

Smithkline Beecham and ors. Vs. Prakesh Setia and ors.

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SooperKanoon Citation : sooperkanoon.com/707979

Court : Delhi

Decided On : Mar-08-2002

Reported in : 99(2002)DLT838

Judge : Mukundakam Sharma, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rules 1 and 2

Appeal No. : Suit No. 977 of 2001

Appellant : Smithkline Beecham and ors.

Respondent : Prakesh Setia and ors.

Advocate for Def. : None

Advocate for Pet/Ap. : Man Mohan Singh, Adv

Judgement :

ORDER

Mukundakam Sharma, J.

S. No. 977/2001:

1. The defendants have filed the written statement. However, no reply is filed to the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure is on record. Accordingly, the suit shall proceed ex parte as against the defendants. At

the request of Counsel appearing for the plaintiff, permission is granted to lead evidence by filing an affidavit, which shall be filed within eight weeks.

LA. No. 4802/2001 :

2. The present suit is filed by the plaintiffs praying for a perpetual injunction against the defendants restraining them, their agents, servants and all other persons acting on their behalf from manufacturing, exporting, selling, offering for export, or advertising in India or overseas, directly or indirectly dealing in pharmaceutical preparations under the trade mark ABEN or ALBEN or any other deceptively similar variant similar to the trade mark of the plaintiff-ALBEN.

3. It is contended that the defendants have adopted the trade mark ABEN and are using the same for their goods thereby causing confusion and deception. It is also contended that adoption of the said trade mark ABEN by the defendants is an invasion to the legitimate rights of the plaintiffs.

4. While issuing summons and notices to the defendants, an order of ad interim injunction was granted restraining the defendants from manufacturing, selling or offering for sale pharmaceutical preparations under the trade mark ABEN.

5. None appears for the defendants when the matter is called out. Accordingly, I proceed to dispose of the application filed by the plaintiff under Order 39 Rules 1 and 2 of the Code of Civil Procedure, upon hearing the Counsel appearing for the plaintiff and upon perusal of the records placed before me.

6. The plaintiff has used the trade mark ALBEN as a coined word, which according to the plaintiff has no dictionary meaning. According to the plaintiffs, the said trade mark ALBEN is an inherently distinctive mark, indicating and connoting the goods of the plaintiffs exclusively and that the said trade mark ALBEN is the registered trade mark of the plaintiffs in India and the said registration has been renewed from time to time. In support of the said contention, documents have been placed on record. The said trade mark of the plaintiffs ALBEN is also registered in the name of the plaintiffs in various other countries as well.

7. The defendants have used the trade mark ABEN in respect of same drug of the plaintiffs. The aforesaid trade mark adopted by the defendants is phonetically almost similar to that of the plaintiffs' trade mark ALBEN and, therefore, the plaintiffs are entitled to a temporary injunction, as prayed for in the application, as the said adoption by the defendants would cause confusion and deception in the mind of the general public. Accordingly a temporary injunction is granted in favor of the plaintiffs and against the defendants, their servants, agents, partners and all other persons acting on their behalf from manufacturing, exporting, offering for export, selling, offering for sale or advertising in India or overseas, directly or indirectly dealing in pharmaceutical preparations under the trade mark ABEN or ALBEN or any other deceptively similar variant of the trade mark of the plaintiffs. This order shall be operative till the disposal of the suit.

Application stands disposed of in terms of the aforesaid order.

S. No. 977/2002:

Renotify on 14.8.2002.

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