

SRS.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2194/2011

Bayer Corporation

Petitioner

Vs.

The Controller of Patents & Anr.

Respondents

Mr.Janak Dwarkadas,Sr.Counsel i/b M/s Gajria & Co.for Petitioner

Mr.Advait Sethna i./b Ms.Navina Kumai for Res.1

Mr.Birendra Saraf a/w Rajeshwari Hariharan i/b Sabeena Mahadik for
Res.2

**CORAM: P.B.MAJMUDAR &
MRS.MRIDULA BHATKAR, JJ.**

DATE: 11th November,2011

P.C.

1 By way of this petition,the petitioner has challenged the order dated 11/8/2011, passed by the Controller of Patents under section 87(1) of the Patents Act,1970 by which the Controller of Patents has come to the conclusion that the applicant Natco Pharma Limited has made out prima facie case under section 87(1) of the Patents Act,1970 and the petitioner is directed to give reply to the

notice given by Natco Pharma Ltd. within the stipulated time. The order is challenged by the petitioner on various grounds such as there is no prima facie material for coming to the conclusion that there is prima facie case in favour of respondent no.2. During the course of hearing, it is pointed out that the petitioner has already taken out proceedings for infringement of patent before the Delhi High Court against Natco Pharma Ltd. And when the injunction application is kept for hearing, respondent no.2 moved the Patent Authority for compulsory license under section 84(1) of the Patent Act.

2 During the course of hearing, Mr.Dwarkadas has argued that a clarification is sought for from the Delhi High Court on behalf of the petitioner that the statement recorded in the order that till proceedings under Section 84(1) of the Patent Act is decided, injunction application may be deferred. He submitted that no such statement was made on behalf of the petitioner before the Delhi High Court. In our view, this Court today cannot pass any order ignoring the aforesaid aspect, as the order of the Delhi High Court is placed on record containing the said aspect. Considering the fact that the petitioner also marketing its product within the territorial jurisdiction of the Delhi High Court, it would be just and proper to permit the

petitioner to take out substantive proceedings regarding the subject matter of this petition before the Delhi High Court, especially when the Delhi High Court is also seized of the proceedings in connection with the infringement of the patent in respect of the various matters.

3. Mr.Saraf fairly states that his client will not oppose the said petition on the ground of want of territorial jurisdiction especially when the petitioner is also marketing the medicines within the territorial jurisdiction of the Delhi High Court. He submitted that the respondent No.2 will contest the petition on all available points including the maintainability of the petition, instead on the point of territorial jurisdiction.

4. Considering the said aspect of the matter, the above petition is not entertained by this Court, with a liberty to the petitioner to file appropriate petition before the Delhi High Court, especially when it has been observed by the Delhi High Court in Injunction Application No.7343 of 2011 that in view of the pendency of the application before the Controller of Patent, both the parties agrees not to proceed further with the present proceedings. Considering the said aspects, the above petition is disposed of with a liberty to the petitioner to move the Delhi High Court regarding the subject matter. Time to file reply before the Controller of Patent is

extended till 18-11-2011. Such extension is given without prejudice to the rights and contentions of the parties and with a view to see that the petitioner in the meanwhile, can approach the Delhi High Court by way of appropriate proceedings. It is clarified that we have not expressed any opinion on the merits of the case and the points raised by both the sides in this petition are explicitly kept open.

(MRS.MRIDULA BHATKAR, J.)

(P.B.MAJMUDAR, J.)