

MANU/DE/3221/2011

Equivalent Citation: 2011VIIAD(Delhi)86, 2011(47)PTC544(Del)

IN THE HIGH COURT OF DELHI

IA Nos. 7397/2011 and 9792/2011 in CS (OS) No. 81/2010

Decided On: 16.08.2011

Appellants: **F. Hoffman-La Roche Ltd. and Anr.**
Vs.

Respondent: **Dr. Reddy's Laboratories Ltd. and Anr.**

Hon'ble Judges/Coram:

Manmohan Singh, J.

Counsel:

For Appellant/Petitioner/Plaintiff: Pravin Anand, Sharwan Chopra and Krutikka Vijay, Advs.

For Respondents/Defendant: Prathiba M. Singh, Saya Choudhary, Advs. for D-1. and Gaurav Barathi, Adv. for D-2.

Subject: Civil

Acts/Rules/Orders:

Code of Civil Procedure, 1908 (CPC) - Section 151

Cases Referred:

F. Hoffman La Roche v. Natco Pharma Ltd. CS (OS) No. 2465 of 2009; Chitivalasa Jute Mills v. Jaypee Rewa Cement MANU/SC/0092/2004 : AIR 2004 SC 1687

Disposition:

Application dismissed

Case Note:

Civil - Consolidation of suit - Applications filed by Plaintiff under Section 151 of the Code of Civil Procedure, 1908 (CPC) for consolidation of another suit with present suit and second application filed by Defendant No. 1 under Section 151 of the CPC for closure of Plaintiff's right to lead evidence - Held, application filed by Defendant No. 1 states that evidence, as directed by the Court could not be adduced in view of filing of present application for consolidation - He further submits that Defendant No. 2 had not completed the admission and denial of document as directed by Court at the time of framing of issues, therefore, there was a non compliance on the part of Defendant No. 2 which could not be attributed to Plaintiffs, otherwise Plaintiffs were ready to file the evidence after passing the order as the evidence in both matters were already prepared for filing - CPC did not have specific provision for consolidation of proceedings - Party could invoke the jurisdiction under Section 151 of the CPC - Powers had to be exercised fairly to meet the ends of justice and to prevent an abuse of process of the Court - Orders of consolidation were normally passed if it saves the parties from multiplicity of the proceedings, delay and expenses - Application of Plaintiffs allowed - Second application dismissed.

JUDGMENT

Manmohan Singh, J.

1. The Plaintiffs have filed the present suit for permanent injunction restraining infringement of Patent No. 196774, rendition of accounts, damages and delivery up.

2. By this order I shall decide the two applications, being IA No. 7397/2011 and IA No. 9792/2011. The first application i.e. IA No. 7397/2011 is filed by the Plaintiff under Section 151 Code of Civil Procedure for the consolidation of another suit namely F. Hoffman-La Roche v. Natco Pharma Ltd., CS (OS) No. 2465 of 2009 with the present suit. The second application under Section 151 Code of Civil Procedure is filed by Defendant No. 1 seeking closure of the Plaintiff's right to lead evidence.

IA No. 7397/2011 by Plaintiffs

3. In this application, it is stated by the Plaintiffs that as the other suit of the Plaintiffs namely F. Hoffman-La

manupatra Roche being CS (OS) No. 2465 of 2009 is also for the infringement of the same patent registered under No. 196774 by Natco Pharma Ltd. who is Defendant No. 2 in the present case. The present status of the said case is that arguments on interim injunction application had now been concluded and orders are reserved on 19.04.2011. Prayer is made in the application that both suits be consolidated in order to avoid unnecessary duplication of evidence. It would save the time of the court in final adjudication of the two matters.

4. In its reply to this application, the Defendant No. 1 submits that both the suits are at different stages, i.e. the present suit is at the stage of recording of evidence by the local commissioner and in CS (OS) No. 2465/2009 the issues are yet to be framed. It is also stated that the Defendant No. 1 in the present case is not a party in the earlier suit and any decision on the rights and liabilities of Defendant No. 1 in the present suit may cause prejudice to the Defendant No. 2.

IA No. 9792/2011 by the Defendant No. 1

5. In this application, the Defendant No. 1 has submitted that on 07.03.2011 the issues were framed in the matter and the Plaintiffs were given eight weeks time to file the list of witnesses and affidavits by way of evidence. Further, at the behest of the Plaintiff, a local commissioner was also appointed by this Court for recording of evidence. However, till date the Plaintiffs have No. filed evidence by way of affidavits except a list of witnesses was filed. Therefore, the prayer is sought for closure of the right of the Plaintiffs to lead evidence.

6. In reply to this application filed by the Plaintiffs, it is stated, that since, Plaintiffs are seeking consolidation of the present suit with CS (OS) No. 2465/2009. Therefore, it would be just and expedient that the Plaintiffs be allowed to file their evidence to comprehensively addressing all the issues at one place instead of filing the similar evidence two times.

7. Before dealing with the rival submissions of both the parties, it is necessary to give certain facts about the detail of the parties and their relations:

(i) The Plaintiffs earlier filed a suit for infringement of Patent No. 196774 against Natco Pharma Ltd. (who is Defendant No. 2 in the present case) wherein the issues are yet to be framed.

(ii) Later on the Plaintiffs have filed the present second suit for infringement of patent in relation to same patent against two parties, i.e., Dr. Reddy's Laboratories Ltd./Defendant No. 1 and Natco Pharma Ltd./Defendant No. 2.

(iii) Admittedly the product in question is being manufactured by Defendant No. 2 Natco Pharma Ltd. on behalf of Defendant No. 1. Although the Defendant No. 1 in the present suit, i.e., Dr. Reddy's Laboratories Ltd. is not a party in the earlier suit filed by the Plaintiffs.

8. The learned Counsel appearing on behalf of the Defendant No. 1 has opposed the present application mainly on the following grounds:

A) The first submission of the learned Counsel for the Defendant No. 1 is that the earlier suit filed by the Plaintiff against Natco Pharma Ltd. is at different stage.

In the present suit, issues were framed on 07.03.2011. The Local Commissioner was appointed to record the evidence of the parties and eight weeks time was granted for the said purpose. The said period had expired on 02.05.2011. After the expiry of the period, the Plaintiffs have now filed the present application for consolidation with malafide intention. Hence, the Defendant No. 1 has filed the requisite application being IA No. 9792/2011, for closure of evidence.

B) The second submission is that the Defendant No. 1 in the present case had earlier filed an application, being IA No. 1651/2011 seeking consolidation of the present suit with other three suits pending before this Court on the similar reasons including the suit in question of which the Plaintiff has now sought consolidation. It is argued that the same very Plaintiffs opposed the Defendant No. 1's application. Therefore, now the Plaintiffs cannot ask for consolidation.

Further, the Defendant No. 1 is not a party in the earlier suit, the case of Defendant No. 1 would be prejudiced if the orders of consolidation are passed.

9. In reply, Mr Pravin Anand states that earlier the consent on behalf of Plaintiffs could not be given due to the reason that in the first suit being CS(OS) No. 89/2008 filed against M/s Cipla Limited, the evidence of the parties was recorded on priority basis as per direction of the Supreme Court who expedited the suit for final disposal, otherwise, the Plaintiffs ought to had agreed at time itself. As far as the fourth suit filed against Glenmark Pharmaceuticals for the same patent is concerned, the Plaintiffs have No. objection in case the same be also clubbed.

10. As far as the application filed by the Defendant No. 1 is concerned, Mr. Anand states that evidence, as directed by the Court vide order dated 07.03.2011, could not be adduced in view of filing of present application for consolidation. He further submits that the Defendant No. 2 has not completed the admission and denial of document as directed by the court at the time of framing of issues, therefore, even otherwise,

manupatra there was a non compliance on the part of Defendant No. 2 which cannot be attributed to the Plaintiffs, otherwise the Plaintiffs are ready to file the evidence after passing the order as the evidence in both matters are already prepared for filing.

11. The Code of Civil Procedure, 1908 does not have specific provision for consolidation of proceedings but the order of the same can be passed under the provision of inherent power of this Court and the

party can invoke the jurisdiction under Section 151 Code of Civil Procedure. No. doubt, the powers have to be exercised fairly to meet the ends of justice and to prevent an abuse of process of the Court. The orders of consolidation are normally passed if it saves the parties from multiplicity of the proceedings, delay and expenses.

12. In the case of *M/s Chitivalasa Jute Mills v. M/s Jaypee Rewa Cement*; MANU/SC/0092/2004 : AIR 2004 SC 1687, the Supreme Court observed as under:

9.The fact remains that the cause of action alleged in the two plaints refers to the same period and the same transactions, i.e., the supply of jute bags between the period 07.01.1992 and 31.12.1993. What is the cause of action alleged by one party as foundation for the relief prayed for and the decree sought for in one case is the ground of defence in the other case. The issues arising for decision would be substantially common. Almost the same set of oral and documentary evidence would be needed to be adduced for the purpose of determining the issues of facts and law arising for decision in the two suits before two different courts. Thus, there will be duplication of recording of evidence if separate trials are held. The two courts would be writing two judgments. The possibility that the two courts may record finding inconsistent with each other and conflicting decrees may come to be passed cannot be ruled out.

12. The two suits ought not to be tried separately. Once the suit at Rewa has reached the Court at Visakhapatnam, the two suits shall be consolidated for the purpose of trial and decision. The Trial Court may frame consolidated issues. The Code of Civil Procedure does not specifically speak of consolidation of suits but the same can be done under the inherent powers of the Court flowing from Section 151 of the Code of Civil Procedure. Unless specifically prohibited, the Civil Court has inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses. Complete or even substantial and sufficient similarity of the issues arising for decision in two suits enables the two suits being consolidated for trial and decision. The parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials. The evidence having been recorded, common arguments need be addressed followed by one common judgment. However, as the suits are two, the Court may, based on the common judgment, draw two different decrees or one common decree to be placed on the record of the two suits. This is how the Trial Court at Visakhapatnam shall proceed consequent upon this order of transfer of suit from Rewa to the Court at Visakhapatnam.

13. After having heard both the parties, it is not disputed that the subject matter of patent and relief sought are same. It is also not disputed by the Defendant No. 1 that the Defendant No. 2 is manufacturer of their products against whom the earlier suit filed by the Plaintiffs and the same is Defendant No. 2 herein. It also appears that most of documents, issues and evidence to be produced by the parties would be common. It is not in dispute that the Plaintiffs' witnesses are also from overseas. The Defendants' witnesses would also be from outside the jurisdiction of this Court. The nature of the suit and cause of action are similar. The Defendant No. 2 in the present suit is the manufacturer of Defendant No. 1 and is the sole Defendant in the earlier suit which was filed on the basis of the same patent.

14. As far as stages of two suits are concerned, in the present suit, issues have been framed and directions have been issued for production of evidence and in the earlier suit the order has been reserved on injunction application. As soon as the said orders are pronounced, the said suit will also come up before Court for framing of issues and similar directions can be given to produce the evidence by the Plaintiffs. No. prejudice would be caused to the Defendants if the orders for consolidation are passed.

15. I do not feel that there is any ulterior motive on the part of the Plaintiffs to file the present application, rather in order to expedite the proceedings, the Plaintiffs had withdrawn their application for interim injunction against the Defendants. Therefore, question of malafide on the part of the Plaintiffs does not arise. I am of the opinion, rather, it would be more appropriate if both the suits are consolidated as the witnesses of the parties would not come twice. It will not only curtail the delay and save the time of the Court but also save the expenses to be incurred by the parties.

16. The application of the Plaintiffs is allowed. As far as application of the Defendant No. 1 is concerned, in view of the orders passed in IA No. 7397/2001, the second application filed by the Defendant No. 1 being IA No. 9792/2011 is dismissed.

