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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **FAO(OS) (COMM) 160/2019 and C.M.No.31063/2019**

NATCO PHARMA LTD ..... Appellant

Through: Mr.Sai Deepak, Mrs. Rajeshwari, Mr.G.Nataraj and Ms.Radhika Roy, Advocates.

versus

BRISTOL MYERS SQUIBB HOLDINGS IRELAND UNLIMITED COMPANY& ORS ..... Respondents

Through: Mr.Amit Sibal, Senior Advocate with Mr.Pravin Anand, Ms.Archana Shankar, Mr.Dhruv Anand, Ms.Tusha Malhotra, Ms.Prachi Agarwal, Ms. Rashi Punin, Ms.Ridhie Bajaj, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% 16.07.2019

Dr. S. Muralidhar, J.:

1. Notice. Notice is accepted by learned counsel for the Respondents. With the consent of learned counsel for the parties the appeal has been heard finally.

2. This appeal by the Defendant in CS (COMM) 342 of 2019 is directed against an order dated 5th July 2019 passed by the learned Single Judge in IA No.8873 of 2019 in the said suit whereby *inter alia* the Appellant was restrained from infringing Indian Patent IN No.247381 (hereafter referred to as 'the suit patent') held by the Respondents/Plaintiffs.

3. There are 3 Respondents in this appeal. They correspondingly were Plaintiffs 1, 2 and 3 in the aforementioned suit. They will be referred to in this order, for convenience, as Plaintiffs 1, 2 and 3, just as the Appellant will be referred to as the Defendant.

4. Plaintiff No.1 is Bristol-Myers Squibb Holdings Ireland Unlimited Company, which is a company incorporated in the laws of Ireland, with its head office in Switzerland. Plaintiff No.2 Bristol-Myers Squibb India Pvt. Ltd. is incorporated under the Companies Act, 1956, having its registered office in Mumbai and another office in New Delhi. It is a subsidiary of Plaintiff No.1 and markets pharmaceutical products in the domestic market. Plaintiff No.3 Pfizer Ltd. is a company incorporated under the Companies Act, 1913 having its registered office in Mumbai. Plaintiff No.3 is also into discovery, development, manufacturing and marketing of pharmaceutical products. Plaintiff No.3 is stated to have entered into a collaboration arrangement with Plaintiff No.2 *inter alia* to "commercialize including marketing, promoting, selling, etc. of 'Apixaban' products in India."

5. The prayer in the above suit was for a permanent injunction, restraining the Defendant from using, making, selling, storing, distributing, advertising, marketing, exporting, offering for sale, importing or in any other manner directly or indirectly dealing in any product, including but not limited to 'Apigat' that was alleged to infringe the subject matter of the suit patent.

6. The Plaintiffs have averred in the plaint that the suit patent covers a molecule having an International Non-proprietary Name ('INN') Apixaban

used in the prevention and treatment of thromboembolic diseases. It is stated that the Plaintiffs are the rightful owners of the suit patent, the term of which expires on 17th September 2022. It is stated that the patent was granted in 2011.

7. It is further averred in para 10 of the plaint that the Defendant on 9th May 2016 filed a petition before the Intellectual Property Appellate Board ('IPAB') seeking revocation of the suit patent. The said petition is stated to be pending. It is averred in the plaint that the Plaintiff No.1 has also been granted Indian patent No.243917 for 'Nitrogen Containing Heterobicycles As factor Xa Inhibitors' on 11th November 2010. It is stated that Plaintiff No.2 was granted import and marketing approval for Apixaban tablets by the Drug Controller General of India ('DGCI') on 3rd August 2012, 16th May 2014, 29th May 2015 and the permission was recently amended in the name of Plaintiff No.3 on 15th February 2019 by the DGCI.

8. According to the Plaintiffs, in the last week of June 2019 they received information that the Defendant is planning to launch a generic version of Apixaban under the probable brand name 'Apigat' and has "already distributed sample packs to many cardiologists in the country." According to the Plaintiffs, in the first week of July 2019 they were shocked to learn that "the stock of the Defendant would soon be available for sale in the market, as the saleable stock are in transit as per the information received from credible sources."

9. The Plaintiffs have stated that investigation conducted by them revealed

that the Defendant was in the process of launching the product 'Apigat' having the composition of Apixaban. However, "the same was not available with any super stockist/distributor/company and the same is not available for sale in the open market."

10. In para 33 of the plaint it is averred as under:

> "33. Moreover, the intention of the Defendant to launch the generic version of the drug in the commercial market is further evident from the activities of the Defendant that it has filed a suit for declaration of non-infringement of Plaintiffs' another Patent No.IN 243917 against the Plaintiffs before the City Civil Court in Hyderabad pertaining to their product having the international non-proprietary name Apixaban which was listed on 28th June 2019."

11. The plaint stated that notice appeared to have been issued in the said suit by the City Civil Court Hyderabad on 8th July 2019. It was contended by the Plaintiffs that without waiting for the injunction application to be argued in the said suit, the Defendant appeared to have "sent the products to their distributors, although the infringing product has not entered the commercial and retail market, as verily believed by the Plaintiffs." It is on the above basis that the aforementioned suit CS (COMM) 342 of 2019 was filed and came up for hearing first before the learned Single Judge on 5th July 2019 along with IA No.8876 of 2019 filed by the Plaintiff under Order XXXIX Rules 1 and 2 CPC seeking interim injunction.

12. A perusal of the impugned order shows that the Defendant appeared on caveat and was represented by Senior Counsel. Para 11 of the impugned

order indicates that the learned Single Judge "straightaway asked the senior counsel for the Defendant as to why the interim order in terms of the order dated 31st May, 2019 in CS (COMM) No. 314/2019 titled as ***Sterlite Technologies Ltd. v. ZTT India Pvt. Ltd.*** should not be passed till the completion of pleadings and hearing of the application for interim relief". A copy of the aforementioned order in ***Sterlite Technologies Ltd.*** *(supra)* was also "handed over to the senior counsel for the Defendant."

13. At this stage it requires to be noticed that the suit, in which the said interim order in ***Sterlite Technologies Ltd. v. ZTT India Pvt. Ltd.*** was passed (incidentally by the same learned Single Judge who passed the impugned interim order), was for a permanent injunction restraining the Defendant in that case from infringing two Indian patents. The subject patents there were 'method patents'. The case of the Plaintiff in that case was that "the optical fibre being marketed by the Defendant had the same technical parameters as that of the optical fibres of the Plaintiff produced with the patented technology."

14. The said interim order in ***Sterlite Technologies Ltd.*** granting ad interim injunction was passed *ex-parte*. Interestingly in para 9 of the said order, the learned Single Judge observed that "at this stage, it is not possible to form an opinion, even *prima facie*." In the said order the learned Single Judge was of the view that there should invariably be an interim injunction granted in the first place in favour of a patent holder for the reasons set out in paras 16-17, which read as under:

"16. I say so because, a patentee, even after succeeding in the

> suit, in the absence of any interim order, is entitled only to profits earned by the defendant and which do not reflect the profits which the plaintiff would have earned if there had been no infringement. As aforesaid, the infringer is able to market at a much lower price, resulting in earning far less profits that which the patentee would have earned if there had been no infringement. The patentee would then also be entitled to punitive action against defendant for violation of the interim order.
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> 17. Such arrangement, in my view, will also ensure that suits for infringement are not contested, only to take advantage of and to reap the fruits of delays in Court process, in spite of defendant in its heart knowing the truth. Each defendant, in its heart knows the truth and if in spite of knowing that it is in infringement, violates the interim order, will, besides taking the risk of financial liability, also run the risk of penal consequences. This will also ensure purity of the Court process."

15. According to the learned Single Judge "this experimentation, with interim orders in patent infringement suits, is the need of the hour." On the above reasoning in the instant case, by the impugned order the learned Single Judge granted on the lines of the order granted in ***Sterlite Technologies Ltd.*** *(supra)* till the next date i.e. 19th September 2019, an interim injunction restraining the Appellant/Defendant herein from infringing the suit patent i.e. IN Patent No. 247381. A copy of the order in ***Sterlite Technologies Ltd.*** *(supra)* was annexed to the impugned interim order "for convenience".

16. It requires to be noticed at this stage that on the same date that CS (COMM) 342 of 2019 was listed before the learned Single Judge another

patent infringement suit CS (COMM) 343 of 2019 (***Bayer Health Care LLC v. Natco Pharma Ltd.***) was listed. A near identical order for interim injunction was passed by the learned Single Judge in the application filed in the said suit CS(COMM) 343 of 2019 on the same day i.e. 5th July 2019 in terms of the interim injunction granted by the order dated 31st May 2019 in ***Sterlite Technologies Ltd. v. ZTT India Pvt. Ltd.*** (*supra*).

17. The said interim order dated 5th July 2019 passed by the same learned Single Judge in the interim injunction application in the aforementioned CS (COMM) 343 of 2019 was set aside by this Division Bench (DB) by a detailed judgment dated 11th July 2019 in FAO (OS) (COMM) 158 of 2019 (***Natco Pharma Ltd. v. Bayer Healthcare LLC***). The application for interim relief in which the said order granting interim injunction was passed was placed before the learned Single Judge for a fresh consideration on merits.

18. Mr. Sai Deepak, learned counsel appearing for the Appellant/Defendant, made the following submissions:

(i) The impugned interim order is contrary to the settled law explained in several decisions of the Supreme Court and this Court in the matter of granting an *ad interim* injunction. In particular, there is no satisfaction recorded of the Plaintiff having made out a *prima facie* case or that the balance of convenience is in its favour or that it would suffer irreparable hardship if the injunction is not granted.

(ii) On essentially the same issue in 'Apixaban' the earlier suit filed by the Defendant in the City Civil Court in Hyderabad against the plaint is pending

and, therefore, in terms of Section 10 of the CPC the suit before the learned Single Judge could not have proceeded.

(iii) In the cause of action paragraph in the plaint filed before the learned Single Judge, the Plaintiffs admitted the cause of action that arose in July 2019 when the Defendant's suit was filed in Hyderabad. Therefore, under Section 20 CPC the Plaintiffs ought to have pursued their remedies only in that Court.

(iv) There is no presumptive validity in the grant of a patent. There was already a revocation application filed by the Defendant against the suit patent pending before the IPAB; inasmuch as Apixaban was already disclosed but not claimed in IN 243917 it was *publici juris*. No valid patent could have been granted in respect thereof again in favour of the Plaintiffs. The fundamental premise of patent law was that monopoly in a patent is limited to the claims and any product/process/compound which is disclosed but not claimed is dedicated to the public.

(v) The impugned order overlooked the fact that the Defendant's product was already in the market. The falsity of the case of the Plaintiffs was evident from the fact that they had all the details of the Defendant's product including the trademark, photograph of the actual product, all of which was possible only if the Plaintiffs had the Defendant's product.

(vi) The impugned order was vague and was capable of leading to further litigation regarding non-compliance by the Defendant with the said interim injunction. In fact the Plaintiffs had already filed IA 9421 of 2019 against

the Defendant under Order XXXIX Rule 2-A CPC alleging violation of the interim injunction and the said application was being heard today before the learned Single Judge.

(vii) An order similar to the one passed by this DB in FAO (OS) (COMM) 158 of 2019 should be passed in the present appeal as well. The impugned order should be set aside and the matter remanded to the learned Single Judge for a fresh decision on merits.

19. Mr. Amit Sibal, learned Senior Counsel appearing for the Respondents/ Plaintiffs, stated that he was aware of and had examined the order dated 11th July 2019 passed by this Court in FAO (COMM) 158 of 2019 but sought to distinguish the present case by referring to the fact that in that appeal the Appellant (Natco Pharma Ltd.) had filed an affidavit before the DB stating that they had released their product in the market on 27th June 2019. In the present case, on the other hand, the Defendant filed an affidavit before the learned Single Judge in IA 9421 of 2019 claiming that it had started its promotional activity for launch on 19th June 2019 and that its product Apigat "was prescribed to patients from 28th June 2019." He submitted that it was, therefore, false for the Defendant to contend that its product Apigat was already available in the market. Clearly an attempt was made to overreach the Court of the learned Single Judge.

20. Mr. Sibal further submitted that

(i) The elements of *prima facie* case, balance of convenience and irreparable

hardship to the Plaintiffs in support of the grant of interim injunction in their favour, even if not so stated in express terms, were discernable from the impugned order.

(ii) It was plain that the only defence of the Defendant was regarding invalidity of the patent whereas there was sufficient admission even in the plaint in the suit filed by the Defendant in the City Civil Court at Hyderabad that the suit patent covered the product 'Apigat'.

(iii) Without pursuing its revocation application pending before the IPAB to its logical conclusion, the Defendant had risked introducing its product in the market. This was dishonest and done knowing fully well that the product sought to be introduced by it was already covered by a valid patent held by the Plaintiffs.

21. The above submissions have been considered. At the outset, the Court would like to observe that the impugned order is nearly identical to the interim order passed on the same day i.e. 5th July 2019 by the same learned Single Judge in the suit CS (OS) (COMM) 343 of 2019 filed against the present Defendant by Bayer Healthcare LLC. That suit too alleged infringement of a pharmaceutical patent. The only difference is the suit patent. Even several paras of the impugned interim order in the present case are a verbatim reproduction of the said interim order in the suit by Bayer Healthcare.

22. As already noticed, this DB has by a detailed order dated 11th July 2019

in FAO (OS) (COMM) 158 of 2019 (*Natco Pharma Ltd. v. Bayer Healthcare LLC*) set aside the said interim order and remanded the application for interim injunction to the learned Single Judge for a fresh decision on merits. In the present appeal, the issues involved are the same. In the considered view of this DB, the order passed by it on 11th July 2017 in FAO (OS) (COMM) 158 of 2019 would apply on all fours to the present appeal. The discussion that follows, therefore, is largely on the lines of that contained in the said order.

23. To begin with, it may be observed that the impugned order was clearly not an *ex parte* order. The Defendant appeared on caveat on the very first date and made submissions. On the other hand, the order which has been adopted by the learned Single Judge i.e. the order in ***Sterlite Technologies Ltd.*** *(supra)* was an *ex parte* order.

24. The law in relation to the passing of orders of interim injunction is fairly well settled. Illustratively, reference may be made to the decision in ***Wander v. Antox (1990) (Supp) SCC 727*** where the legal principles were enunciated as under:

> "9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated
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> "...is to protect the plaintiff against injury by

> violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience lies."

> The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted."

25. In ***Dorab Cawasji Warden v. Coomi Sorab Warden (1990) 2 SCC 117***, the Supreme Court explained:

> "16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party

against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money

(3) The balance of convenience is in favour of the one seeking such relief.

Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the Court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive or complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

26. The decision in ***Dorab Cawasji*** *(supra)* has been followed by the Supreme Court in its recent judgment in ***Tek Singh v. Shashi Verma 2019 (3) SCALE 86***, in which it clarified that "when a mandatory injunction is granted at the interim stage much more than a mere *prima facie* case has to be made out."

27. In ***Seema Arshad Zaheer v. Municipal Corporation of Greater Mumbai (2006) 5 SCC 282***, the above principles were reiterated thus:

"29. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are

made out by the plaintiff : (i) existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's rights, the balance of convenience tilting in favour of plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands."

28. In ***Mahadeo Savlaram Shelke v. Pune Municipal Corporation (1995) 3 SCC 33***, the Supreme Court explained that the expressions 'prima facie' case, 'balance of convenience', 'irreparable hardship' were not rhetorical phrases for mere 'incantation'. It was explained:

"8. In *Dalpat Kumar v. Prahlad Singh AIR 1993 SC 276,* a Bench of two Judges (in which K. Ramaswamy, J. was a Member) of this Court held that the phrases "prima facie case", "balance of convenience" and "irreparable loss" are not rhetorical phrases for incantation but words of width and elasticity, intended to meet myriad situations presented by men's ingenuity in given facts and circumstances and should always be hedged with sound exercise of judicial discretion to meet the ends of justice. The court would be circumspect before granting the injunction and look to the conduct of the party, the probable injury to either party and whether the plaintiff could be adequately compensated if injunction is refused. The existence of prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits.

> Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The court further has to satisfy that non-interference by the court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The balance of convenience must be in favour of granting injunction. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. The court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

29. Matters involving alleged infringement of patents constitute a separate species of litigation. A further sub-species would be those concerning pharmaceutical patents. This is because the law concerning them under the Patents Act, 1970 and other related legislation has peculiar elements that would have to be kept in view by the Court. Unsurprisingly, therefore, there is a growing volume of Indian case law dealing with the parameters that should weigh with the Court while examining the case of alleged infringement of pharmaceutical patents. While the parameters that have to generally be kept in view in all suits where interim injunctions are sought,

would apply in such cases as well, they would indubitably involve other parameters which have been discussed in a large number of decisions including ***Merck Sharp and Dohme Corporation v. Glenmark Pharmaceuticals 2015 (63) PTC 257 [Del][DB]***. A further example, illustratively, is the decisions in ***Cipla Ltd. v. F.Hoffmann-La Roche Ltd. (2009) 40 PTC 125 (DB)***. The question of challenge of the validity of pharmaceutical patents has also engaged the attention of the Indian Courts at all levels. The need for the principles that would have to be kept in mind while dealing with those contentions, even at the interim injunction stage, hardly need to be emphasised. Illustratively, reference may be made to ***Novartis Ag v. Union of India*** (***2013) 6 SCC 1***.

30. The Court at this stage would like to refer to the fact that only one of the submissions of the Defendant was noted in the impugned order in para 12 as under:

> "12. The senior counsel for the defendant draws attention to para no.28 of the plaint where the plaintiffs have referred to another patent being Indian Patent No.243917 and has contended that the plaintiff in the plaint in para no.28 has falsely pleaded that Indian Patent No.243917 "does not specifically disclose APIXABAN" subject matter of Indian Patent No.247381, subject matter of this suit. It is contended that Indian Patent No.243917 discloses APIXABAN and the defendant, along with its pleadings, will file documents in this regard, which have not been filed by the plaintiffs."

31. The opinion of the learned Single Judge on the said submission is contained in para 13 which reads as under:

> "13. In my view, same would be a ground for invalidity of the

> patent. The same would also be a ground for defeating the suit and if the suit is defeated, the consequences as provided in the order dated 31st May, 2019 in ***Sterlite Technologies Ltd.*** (supra) would not apply."

32. Thereafter, in para 14, the learned Single Judge observes that "the said argument is thus not a ground, at least till the next date of hearing to not pass orders in the said terms."

33. Far from rejecting the submission, the learned Single Judge acknowledges that it would be 'a ground for invalidity of the patent' and would also be 'a ground for defeating the suit'. However, there is no formation of an opinion of the Plaintiffs having made out a *prima facie* case in their favour for grant of an interim injunction. Even the order in ***Sterile Technologies Ltd.*** *(supra)* incorporated as it were 'by reference' by the learned Single Judge in the impugned order does not set out any *prima facie* view. On the contrary, it records in para 9 that 'at this stage, it is not possible to form an opinion, even *prima facie*'. As regards the other two elements viz., balance of convenience and irreparable hardship, there is no mention of these, even impliedly in the impugned order.

34. Although, there are special features in litigation involving infringement of patents, that still would not obviate the Court dealing with the question of grant of interim injunction to record the three important elements as have been stressed in a large number of decisions of the Supreme Court. It is not necessary that the order granting or refusing interim injunction should

expressly state about the above elements but a reading of the order should indicate the forming of an opinion by the Court on the said aspects. A reading of the impugned order does not reflect that the Court has formed such an opinion on the aforementioned elements.

35. Again, each case of alleged infringement of patent, particularly a pharmaceutical patent, would turn on its own facts. It is not possible to conceive an 'across-the-board' blanket approach that would apply to all such cases, where as a matter of routine at the first hearing there would be a grant of injunction in favour of the Plaintiff. The decision in the application of interim injunction has to necessarily indicate the view of the Court on the three elements mentioned hereinbefore and the additional features when it involves a case of alleged infringement of a patent, and in particular, a pharmaceutical patent. It is not the length of the order or its precise wording that matters. It is necessary, however, that the factors mentioned hereinbefore must be discernible from the order which comes to a conclusion one way or the other regarding the grant of an interim injunction.

36. The Court would also like to add here that the impugned order which restrains the Defendant from infringing the suit patent does not lend itself to sufficient clarity. In fact it has already resulted in the Plaintiffs filing an application under Order XXXIX Rule 2A of CPC in the suit alleging violation of the interim injunction by the Defendant. Such an allegation is of course being denied by the Defendant.

37. This Court hastens to clarify that it should not be understood as having expressed any opinion one way or the other on the respective contentions of the parties noted hereinbefore. These have been set out only to highlight what their respective cases at this stage for grant of interim injunction are. These necessarily have to be considered. A reading of the impugned order does not reflect a consideration of the above issues placed before the Court by the parties. It must be added that the broad aspects of the submissions are indeed contained in the plaint, pleadings and documents which were available to the learned Single Judge when the impugned interim order was passed.

38. For the aforementioned reasons, the Court is of the view that the impugned interim order requires to be set aside and the application for interim injunction be heard once again by the learned Single Judge on merits.

39. During the course of hearing this Court made it clear to the parties that it was not expressing any view one way or the other even on the allegations contained in IA 9421 of 2019, except to indicate that with this Court proposing to restore the status quo ante the passing of the impugned order, the said application may be considered to be rendered infructuous.

40. In that view of the matter, Mr. Sibal, on instructions stated that the Plaintiffs will withdraw IA No.9421 of 2019 in which notice has been issued by the learned Single Judge, reserving their right to seek appropriate

remedies in accordance with law at a later point in time, if so warranted.

41. The impugned interim order dated 5th July 2019 is hereby set aside. The status quo as on 5th July 2019, prior to the passing of the impugned order will be maintained by the Defendant. IA 8873 of 2019 shall be listed on 23rd July 2019 before the learned Single Judge. The Defendant will, on or before 19th July 2019, file its reply to the said application with an advance copy to the Plaintiffs. It will be open to the Plaintiffs to file a rejoinder thereto, if any, on or before 22nd July 2019.

42. The learned Single Judge, will after hearing the parties, pass a fresh order uninfluenced by the order in ***Sterlite Technologies Ltd.*** *(Supra)* or the order dated 5th July 2019, which has been set aside by this Court by the present order.

43. The appeal and application are disposed of in the above terms.

44. Copies of this order be given *dasti* to the parties under the signatures of the Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 16, 2019
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