

CASE NO.:
Appeal (civil) 3389 of 2002

PETITIONER:
Cadila Healthcare Ltd

RESPONDENT:
Aurobindo Pharma Ltd. & Anr

DATE OF JUDGMENT: 09/04/2008

BENCH:
Tarun Chatterjee & Harjit Singh Bedi

JUDGMENT:
JUDGMENT

O R D E R
CIVIL APPEAL NO.3389 OF 2002

1. This appeal by special leave arises out of an order of the High Court of Gujrat at Ahmedabad wherein the issue was of vacation of order of injunction after notice which was granted by the trial court at the ex parte stage relating to trade mark/name and passing of the medicine of the appellant "ATORVA" by the medicine of the respondent "ATOR" for the same treatment.

2. Initially, an interim order was granted by the trial court against which the appeal was taken. The appeal was, however, admitted by the appellate authority but it refused to grant any interim order

during the pendency of the appeal. Feeling aggrieved, the appellant before us filed an appeal before the High Court of Gujarat at Ahmedabad which by the impugned order refused to grant any interim order to the appellant, but direction was made to proceed with the suit and dispose of the same at an early date. It is this order of the High Court which was challenged in this Court by way of a special leave petition. While issuing notice on 15th of March, 2008, this Court passed the following order:-

"Exemption allowed.

Issue notice. In the meantime, we pass an ad-interim injunction n in terms of para 17(a) of the application under Order 39 Rule 1 and 2 of the Civil Procedure Code, 1908, filed before the Ahmedabad City Civil Court which reads as follows:

(a) restrain by an order of ad-interim injunction the defendants, their servants, agents, stockists, or others directly or indirectly involved from in any manner using in relation to any medicinal or pharmaceutical preparation in manufacturing or marketing the pharmaceutical product bearing the trademark ATOR or any

other trade mark which is deceptively similar to the plaintiff's trademark."

3. The interim order granted by this Court was made absolute on 6th of May, 2002 and at the same time leave was also granted. This is how the matter has come up for hearing before us for final disposal.

4. Mr.C.A.Sundaram, learned senior counsel appearing on behalf of the appellant submits on instruction that the respondents are now using the name

of their medicine as "ATORIL" and not "ATOR" in respect of which this court in the year 2002 had granted injunction restraining the respondent from using the said name till the disposal of the appeal which is still now continuing. Since the interim order granted by this Court is still continuing for the last six years and considering the other facts and circumstances of this case, we are of the view that the appeal which was filed and still pending before the appellate court practically has now

become infructuous. Accordingly, the appeal before the appellate court is disposed of as infructuous. However, considering the facts and circumstances of the case, we direct the trial court to decide the suit as early as possible preferably within a period of one year from the date of communication of this order. It is needless to say that the interim order granted by this Court shall continue till the disposal of the suit. We make it clear that we have not gone into the merits as to whether the appellant was or is at all entitled to an order of injunction in the application for injunction.

5. Accordingly, this appeal is disposed of with the above direction. There will be no order as to costs.