

SUPREME COURT OF INDIA

Aristo Pharmaceuticals Ltd.

Vs.

Wockhardt Ltd.

(B Kirpal, D Mohapatra and R Sethi JJ.)

24.11.1999

ORDER

1. Leave granted.

2. We have heard counsel for the parties at length. The question involved in this case is whether in the suit for injunction filed by the respondent herein alleging violation of its trademark the Division Bench of the High Court should have reversed the finding of the Single Judge and granted temporary injunction.

3. In view of the fact that the suit is still pending and taking in to consideration then nature of dispute between the parties and the state of evidence, we do not think it proper and appropriate to deal with the matter in any great detail and to express opinion on the merits of the dispute because that may prejudice the parties at the time of trial of the suit.

4. We are here dealing with a case where the respondent, who manufacturing a drug under the name 'SPASMO-PROXYVON', registered in his favour, filed a suit for injunction against the appellant herein who was manufacturing and selling a drug called 'SPASMO-FLAXON'. The Single Judge of the Madras High Court by a reasoned order vacated the ex-parte injunction in his favour which had been granted. The said decision was challenged and the Division Bench allowed the appeal of the respondent and granted an injunction in his favour.

5. It is the case of the appellant herein that this is not a case where the trade-mark of 'SPASMOP-ROXYVON' is being violated by the appellant. According to the appellant the respondent is manufacturing the drug called 'PROXYVON' and also a milder form of that drug called 'SPASMO-PROXYVON'. Similarly, the appellant is manufacturing the drug called 'FLEXON' and milder

version of that called 'SPASMO-FLEXON'. According to the appellant the use of the word 'SPASMO' is meant to indicate that the drug is meant for the soft tissues. It is also the case of the appellant that the word 'SPASMO', which is being objected to by the respondent herein, has been used for several drugs since long before and after the respondent got its trade mark registered in the year 1977.

6. The respondent, on the other hand, submits that the words 'SPASMO-PROXYVON' having been registered in its name the appellant cannot use the word 'SPASMO' in the drug which is manufactured by it.

7. It appears to us that before an injunction could have been granted it was necessary for the court to have allowed the parties to lead evidence in as much as the facts alleged by the appellant herein were not exactly admitted by the respondent. This could have been done only at the time of trial. Whether the word 'SPASMO' has been used in connection with medicine since before and after 1977 is a relevant consideration and there was a dispute between the parties as to whether any drug using the word 'SPASMO' was still being manufactured and sold after the respondent had got its trade mark registered in the year 1977.

8. In our opinion, therefore, the Division Bench ought not to have interfered with the decision of the Single Judge who had declined to confirm the ex-parte injunction which had been issued earlier in favour of the respondent.

9. We accordingly allow these appeals, set aside the judgment of the Division Bench dated 30th January, 1999 and direct the appellant to maintain proper accounts in relation to the manufacture and sale of its drug 'SPASMO-FLEXON' which accounts statement shall be submitted in the trial court annually. We make it clear that the observations made in this Judgment shall not prejudice the parties at the time of trial. The trial court should expedite the hearing of the suit. Mr. P. Chidambaram, learned senior counsel states that the written statement will be filed within eight weeks. It is further made clear that the parties will be at liberty to change the shape and colour of the product in such a manner that one product cannot be mistaken for another.