



2025:DHC:51



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

+ **CS(COMM) 229/2019 & I.A. 10756/2024**

**NOVARTIS AG & ANR.**

.....Plaintiffs

Through: Mr. Hemant Singh, Mrs. Mamta Rani  
Jha, Mr. Siddhanta Sharma, Mr.  
Abhay Tandon, Advocates  
M:8448683746

versus

**NATCO PHARMA LIMITED**

.....Defendant

Through: Mr. J. Sai Deepak, Mr. Afzal B.  
Khan, Mr. Samik Mukherjee, Mr.  
Dominic alvares adn Mr. Avinash K.  
Sharma, Adv.  
M: 7585965845  
Email: del.lit@majumdarip.com

**CORAM:**

**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**J U D G M E N T**

**08.01.2025**

**MINI PUSHKARNA, J:**

**I.A. 10756/2024 (Application seeking leave to file additional written statement)**

1. The instant suit has been filed by the plaintiffs seeking permanent injunction restraining the infringement of plaintiff no.1's *Indian Patent No. 276026 (IN'026)*, rendition of accounts/ damages and delivery up, etc.
2. The present application has been filed under Order VIII Rule 9 of the Code of Civil Procedure, 1908 ("CPC"), by the defendant seeking leave to file additional written statement. The defendant seeks to bring on record the pleadings and grounds related to the Divisional Application, i.e. *IN*



5338/DELNP/2014 (IN'5338) filed by the plaintiffs to the *Parent Application 3951/DELNP/2009*, which resulted in grant of IN'26. It is the case of the defendant that the plaintiffs have suppressed documents pertaining to the Divisional Application which came to the knowledge of the defendant recently.

3. The present application came to be filed during the pendency of another application of the defendant, i.e. *I.A. 4636/2023* under Order XXXIX Rule 4 CPC, seeking vacation of the interim injunction allowed in favour of the plaintiffs *vide* judgment dated 09<sup>th</sup> January, 2023. The said application for vacation of stay filed by the defendant, was subsequently dismissed *vide* judgment dated 09<sup>th</sup> April, 2024. Appeals against both the orders dated 09<sup>th</sup> January, 2023 and 09<sup>th</sup> April, 2024, are currently pending before the Division Bench.

4. Submissions made on behalf of defendant, are as follows:

4.1 The Division Application and its knowledge thereof, is a subsequent event and material to the adjudication of the suit.

4.2 The rules guiding filing of an additional written statement are similar to the rules guiding amendment of pleadings under Order VI Rule 17 CPC. On account of a subsequent development, where trial is yet to commence, the application is *bonafide* and *prima facie* of concern to the suit.

4.3 The discretion to allow or disallow the additional written statement, lies with the Court, and such discretion can be invited upon by an application of a party.

4.4 Under Order XI Rule 1 (12) CPC, both parties have a continuing obligation to disclose the facts which are material to the suit. Since the plaintiffs consciously chose to remain silent on the filing of Divisional



Application and its outcome, the defendant is constrained to bring it to the Court's attention through the proposed additional written statement.

4.5 The plaintiffs are advancing mutually destructive arguments. On the one hand, plaintiffs are stating that additional written statement can only be filed within the period of One Hundred and Twenty (120) days, as stipulated under Order VIII Rule 1 CPC. On the other hand, it is the stand of the plaintiffs that additional written statement can only be filed in response to new facts/ pleadings in replication.

4.6 The judgments dated 09<sup>th</sup> January, 2023 and 09<sup>th</sup> April, 2024 are not conclusive in nature. Therefore, the same have not finally decided the issues sought to be raised in the additional written statement.

4.7 Rule pertaining to filing of written statement within One Hundred and Twenty (120) days, does not extend to provisions of Order VIII Rule 9 CPC.

4.8 Claims in the Divisional Application are identical to the Parent Application. Further, prior art was cited by the Controller of Patents and the Divisional Application of the plaintiffs was rejected by the Controller of Patents on 16<sup>th</sup> December, 2022. Therefore, by way of the additional written statement, the defendant seeks to bring on record the conduct of the plaintiffs.

4.9 Defendant wishes to place on record the fact of rejection of Divisional Application. The defendant will not travel beyond the submissions that have been made by the defendant in the application under Order XXXIX Rule 4 CPC.

4.10 Framing of issues are yet to take place. Issues pertaining to the Division Application can be framed only if it is so pleaded in the written



statement. Therefore, there is necessity to file additional written statement in view of the subsequent development.

5. Submissions made on behalf of plaintiffs, are as follows:

5.1 The present application is not maintainable as the Court has not called upon the defendant to file an additional written statement.

5.2 Order VIII Rule 9 CPC cannot be read in such a way so as to take away the time limit of One Hundred and Twenty (120) days for filing the written statement, as prescribed under the Commercial Courts Act, 2015. The defendant ought to have reserved its right to file the additional written statement in its written statement.

5.3 The developments in relation to the Divisional Application are not material to the present *lis* and the plaintiffs were under no obligation to disclose the same. The documents relating to the Divisional Application were publicly available and the defendant had the benefit of perusing the same.

5.4 The present application filed by the defendant is meritless and liable to be dismissed. The defendant under the garb of the present application is seeking leave to set up an entirely new defence and incorporate additional facts by way of an additional written statement, which have been determined finally by this Court, *vide* judgment dated 09<sup>th</sup> April, 2024.

5.5 The defendant has not made any disclosure as regards the pleadings and documents they seek to bring on record by way of an additional written statement.

5.6 The findings in judgement dated 09<sup>th</sup> April, 2024 are final and not a *prima facie* view. The said judgment has decided the issue *qua* the Divisional Application. Therefore, the defendant is barred by '*issue*



*estoppel*' from re-agitating the said issue.

5.7 The rejection of the Divisional Application by the Controller of Patents was not on merits and the plaintiffs chose not to pursue the same. Moreover, the prior arts, as cited by the learned Controller, have already been considered by this Court in the judgment dated 09<sup>th</sup> January, 2023, while deciding the injunction application.

5.8 The issue of validity of granting suit patent *IN'026* has already been adjudicated upon finally by the Intellectual Property Appellate Board ("IPAB") *vide* order dated 29<sup>th</sup> September, 2020 in appeal, *O.A. 20/2019*, arising from order dated 16<sup>th</sup> August, 2020 passed by Controller of Patents in post-grant opposition filed by the defendant. Therefore, the said issue cannot be re-adjudicated in the present suit, as barred by the principles of '*res judicata*' and '*issue estoppel*'.

6. I have heard learned counsels for the parties and perused the record.

7. Right to file a written statement within the stipulated time period, is a statutory right conferred upon a defendant by the CPC, however, filing of an additional written statement is based upon the discretion of the Court. Provision regarding filing of additional written statement is provided in Order VIII Rule 9 CPC, as follows:

"xxx xxx xxx

*9. Subsequent pleadings - No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.*

xxx xxx xxx"



8. Reading of Order VIII Rule 9 CPC brings forth that additional written statement can be filed only with leave of the Court and upon such terms, as the Court thinks fit. Further, the Court may at any time require additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

9. Rule 9 of Order VIII CPC was earlier omitted by the Code of Civil Procedure (Amendment) Act, 1999 (Act 46 of 1999). The same has been restored by Code of Civil Procedure (Amendment) Act, 2002 (Act 22 of 2002). The consequence of restoration of the said provision is that subsequent pleadings shall be continued to be filed with the leave and discretion of the Court and the Court shall fix a time for presenting the same, which shall not be more than thirty days.

10. The Court has the authority to grant leave to file additional written statement to take into account subsequent events that may have a bearing on the suit. It may be worthwhile to note that provision of Order VIII Rule 9 CPC, which is a rule of procedure, is aimed at advancing the cause of justice and doing substantial justice between the parties. The said provision allows a party to bring on record further pleading after the written statement has been filed. The Court would assess the plea of the party as regards the justification and cogent reasons for filing additional written statement, and as to why said pleas could not be raised at the time of filing the written statement. However, filing of additional written statement cannot be claimed as a matter of right and a party would have to establish plausible grounds for granting leave to file additional written statement.

11. Further, the provision of Rule 9 of Order VIII CPC provides categorically that the Court may at any time require an additional written



statement from any of the parties. This provision is subsequent to the provision of Rule 1 of Order VIII CPC, as amended by the Commercial Courts Act, 2015, which provides an outer limit of One Hundred and Twenty (120) days to file a written statement. There is nothing in the Commercial Courts Act, 2015 to suggest that the provisions of Rule 9 of Order VIII CPC shall not be applicable to Commercial Suits post the expiry of period of One Hundred and Twenty (120) days for filing of written statement. Therefore, the contention of the plaintiffs that additional written statement can be filed only within the statutory limit of One Hundred and Twenty (120) days, cannot be accepted. This Court cannot read into a statute for a condition which the legislature has not appended. The language of the provision of Order VIII Rule 9 CPC is plain and unambiguous, and does not make any stipulation that liberty to file additional written statement can be granted only if the same is within the statutory period, as stipulated in Order VIII Rule 1 CPC.

12. Holding that if the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute, Supreme Court in the case of *Ansal Properties and Industries Limited Versus State of Haryana and Another*, (2009) 3 SCC 553, has held as follows:

“xxx xxx xxx

*39. If the legislature had intended that the licensee is required to transfer the land and also to construct the buildings on it or to make payment for such construction, the legislature would have made specific provisions laying down such conditions explicitly and in clear words in which event the provisions would have been worded in altogether different words and terms. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute*



**is determinative factor of legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute.**

40. In *Ganga Prasad Verma (Dr.) v. State of Bihar* [1995 Supp (1) SCC 192: 1995 SCC (L&S) 383: (1995) 29 ATC 154] it has been held that: (SCC p. 195, para 5)

**“5. Where the language of the Act is clear and explicit, the court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature.”**

xxx xxx xxx

42. The responsibility regarding construction of community centres and other community buildings could be discharged by adopting any of the three options as mentioned hereinbefore and each one of such options is an independent option and one cannot be connected and related with the other. We cannot read the provision relating to construction at the own cost of the developer the schools, hospitals, community centres and other community buildings on the land set apart for this purpose, into an independent alternative provision relating to transfer of such land to the Government free of cost. The aforesaid option given to the developer to construct the community centres and other community buildings at its own cost is when he can utilise himself to manage it. **Therefore, we cannot read the aforesaid provision in the manner sought to be read by Mr Chaudhari, for reading by adding certain words in the aforesaid manner does not appear to be the intention of the legislature while enacting the aforesaid legislation, for otherwise the legislature would have explicitly said so in the body of the main part of the section itself.**

xxx xxx xxx”

(Emphasis Supplied)

13. A written statement has to be filed mandatorily within the statutory outer limit of One Hundred and Twenty (120) days in terms of Rule 1 of Order VIII CPC, as amended by the Commercial Courts Act, 2015. However, as regards additional written statement, a wider discretion has been conferred upon the Courts to grant leave to file additional written statement in appropriate cases and fix a time limit for filing such additional





written statement, which shall not be beyond thirty days. The provision of Rule 1 of Order VIII CPC, as amended by the Commercial Courts Act, 2015, is independent and distinct from the provision under Rule 9 of Order VIII CPC. Therefore, the condition as stipulated in the provision of Rule 1 of Order VIII CPC, as amended by the Commercial Courts Act, 2015, cannot be read into the provision of Rule 9 of Order VIII CPC.

14. In the present case, an additional written statement is sought to be filed by the defendant to bring a subsequent development on record, which as per the defendant is *prima facie* material to the subject matter of the dispute between the parties.

15. This Court notes that the present suit pertains to a Patent, i.e. *IN'026* granted in favour of the plaintiffs on 28<sup>th</sup> September, 2016, and the suit has been filed by the plaintiffs for permanent injunction restraining infringement of the said patent *IN'026*, by the defendant.

16. The plaintiffs had also filed a Divisional Application to the suit patent, i.e. *IN'5338* on 27<sup>th</sup> June, 2014. Various objections were raised by the Controller of Patents. Hearing notice dated 11<sup>th</sup> November, 2022 was issued by the Controller of Patents fixing the date of hearing on 12<sup>th</sup> December, 2022. However, the plaintiffs filed a letter dated 09<sup>th</sup> December, 2022 before the Controller of Patents that they do not wish to pursue the said Divisional Application and thus, will not be attending the hearing.

17. Subsequently, *vide* order dated 16<sup>th</sup> December, 2022, the Divisional Application filed by the plaintiffs was refused under Section 15 of the Patents Act, 1970, in the following manner:

“

**THE PATENTS ACT, 1970**  
**SECTION 15**



IN THE MATTER OF  
PATENT APPLICATION No.  
5338/DELNP/2014

**Applicant: NOVARTIS AG**  
**LICHSTRASSE 35, 4056 BASEL, SWITZERLAND**

**ORDER**

*An application for patent titled "COMPOUNDS AND COMPOSITIONS AS PROTEIN KINASE INHIBITORS" was filed on the 10/01/2014 by NOVARTIS AG through M/s Anand & Anand Advocates B-41, Nizamuddin East, New Delhi – 110013. As per the provision under section 11-A of Patents Act, the said application was published on B-41, Nizamuddin East, New Delhi – 110013. The said application was examined under section 12 and 13 of Patents Act and First Examination Report was issued on 10/01/2018. The applicant filed response to FER on 25/04/2018. Since the objections raised in FER were not met vide the reply to FER the applicant was offered a hearing.*

*The applicants were provided with an opportunity to be heard on 12/12/2022. However the applicant has not complied with the objections and the attorney did not appear for hearing which was also confirmed by the correspondence of the applicant filed on 09/12/2022 regarding the intimation of the applicant for not attending the hearing and the applicant stated (sic) that it does not (sic) wish to pursue the application. In view of these the application for patent 5338/DELNP/2014 is refused u/s 15 of the Patents Act. 1970.*

*Dated this 16<sup>th</sup> day of December, 2022*

**KUMARI RAGINI**  
**Assistant Controller of Patents & Designs "**

18. Upon gaining knowledge of the aforesaid facts, the defendant filed an application for vacation of interim injunction, as granted in favour of the plaintiffs *vide* judgment dated 09<sup>th</sup> January, 2023. Subsequently, during the pendency of the said application, the defendant also filed the present application seeking leave of the Court to file an additional written statement. *Vide* judgment dated 09<sup>th</sup> April, 2024, the application of the defendant, i.e.,



I.A. 4636/2023 under Order XXXIX Rule 4 CPC seeking vacation of interim injunction, was dismissed. The relevant paragraphs of the judgment dated 09<sup>th</sup> April, 2024, are reproduced as under:

“xxx xxx xxx

22. *The submission of Mr. Sai Deepak cannot be accepted, and for a very simple reason. **The Divisional Application IN 5338/DELNP/2014 filed by the plaintiff was not rejected on merits. There is no adjudication by the Patent Office on the objections raised in the FER against the Divisional Application.** The order passed in the Divisional Application reads thus:*

*“The applicants were provided with an opportunity to be heard on 12/12/2022. However, the applicant has not complied objections with and the attorney did not appear for hearing which was also confirmed by the correspondence of the applicant filed on 09/12/2022 regarding the intimation of applicant for the not attending the hearing and the applicant were stated there that does not wish to pursue the application. In view of these the application for patent 5338/DELNP/2014 is refused u/s 15 of the Patents Act. 1970.”*

23. ***It is clear that the Divisional Application was, therefore, not rejected on merits, but because the applicant itself chose not to pursue the application. A decision not to pursue a Divisional Application cannot be regarded, by any stretch of imagination, as acknowledging the merit of the objections contained in the FER raised against the Divisional Application by the Patent Office.** There may be myriad reasons why a party does not choose to pursue a Divisional Application. The decision not to pursue the Divisional Application cannot estop the plaintiff from contesting the grounds on which the validity of the suit patent was sought to be assailed by the defendant.*

xxx xxx xxx

27. ***In my opinion, no more can be read into the order of refusal on the Divisional Application than is stated therein. There is, quite clearly, no decision on merits on the objections contained in the FER raised by the Patent Office. The omission, on the part of the plaintiffs, to make reference to the Divisional Application cannot, therefore, seriously impact, in any way, the prima facie merits of the case.** Nor could it be said that, had the Divisional Application and the outcome thereof, been*



*disclosed, verdict on the plaintiff's application for interlocutory application would have been otherwise.*

*28. Plainly expressed, the entire foundation of the Order XXXIX Rule 4 application of the defendant is the Divisional Application which was filed by the plaintiff. That application was, ultimately, not pursued, and was accordingly refused. The reference to Section 15 of the Patents Act cannot convert the decision into an adjudication on merits of the claims in the Divisional Application. The Court has to take the decision on the Divisional Application for what it is, and as it reads, and, thus viewed, it is apparent that the application was "refused" not because it was found to be meritless, but because the plaintiff chose not to pursue it.*

*Assuming, arguendo, that the decision on the Division Application were to be regarded as on merits*

*29. Even if it were to be assumed, arguendo, that the reference to Section 15 in the order on the Divisional Application would justify the order being read as reflective of the merits of the application, I am still unable to agree with Mr. Sai Deepak that the decision would justify recall, or vacation, of the interim injunction granted to the plaintiff in the present case. It goes without saying that the decision of the Controller is not binding on the Court and, is, at the highest, a factor which the Court could take into account, even if it were to be regarded as an opinion on merits. When, on an independent analysis on merits, this Court has found the suit patent not to be vulnerable to invalidity on any of the grounds envisaged in Section 64 of the Patents Act, the opinion of the Controller can hardly be cited as a ground for this Court to revisit, much less reverse, its decision. That would be analogous to this Court being called upon to reverse an interim order granted by it because the view adopted by it is contrary to the decision of a hierarchically lower Court, which was not brought to its notice.*

*30. I do not deem it necessary, therefore, to enter into the specifics of the Divisional Application, or its legality or validity vis-à-vis the original application filed by the plaintiffs which resulted in the grant of the suit patent. It has to be remembered that the prior arts which were cited by the Controller in the FER against the Divisional Application have all been considered by me in the judgment dated 9 January 2023, by which interim injunction was granted to the plaintiffs. Even were the facts relating to the Divisional Application to have been disclosed, therefore, there is no possibility of the outcome of IA 6384/2019 having been any difference. **The failure on the part of the plaintiffs to disclose the aforesaid fact cannot, therefore, be regarded as sufficient to justify a re-visitation of the order dated 9 January 2023.***



Second proviso to Order XXXIX Rule 4

31. **Besides, the second proviso to order XXXIX Rule 4 of the CPC proscribes any re-visitation of an interlocutory injunction order under Order XXXIX Rules 1 and 2 of the CPC, where the order was passed after hearing the defendant, save and except whether the variation is necessitated by a change in circumstance or whether the order has caused undue hardship to the defendant.** Though there is an averment in the present application that it has been necessitated owing to a change in circumstances, the averment is not supported by any material whatsoever. Inasmuch as the Divisional Application and its outcome were much prior to passing of the order dated 9 January 2023, they cannot constitute “change in circumstances” within the meaning of Order XXXIX Rule 4 of the CPC.

xxx xxx xxx

Outcome of Divisional Application does not affect findings of fact in order dated 9 January 2023

33. In fact, once, after considering all these circumstances, this Court has already found the suit patent not to be vulnerable to invalidity, there can obviously be no question of revisiting the said decision merely on the basis of the submission advanced by Mr. Sai Deepak, predicated on the Divisional Application and its outcome. The findings regarding the suit patent not being vulnerable to invalidity for any of the reasons cited by the defendant would continue to remain untouched and undisturbed, even if the Divisional Application, and its ultimate fate, were to be taken into account.

xxx xxx xxx

35. **It is only, therefore, suppression of a fact which, if disclosed, would alter the outcome of the case, which can be regard as a material fact, as would justify a re-visitation of the order of interim injunction.**

Re. plea of Ceritinib becoming available in the public domain consequent on refusal of Divisional Application

36. The submission that, with the refusal of the Divisional Application, Ceritinib became available for exploitation in the public domain, too, cannot be accepted. The “refusal” of the Divisional Application does not, either in fact or in law, extinguish the suit patent. The claim for a patent for Ceritinib stands granted in the suit patent and, until and unless



*the suit patent is invalidated, the patent continues to remain valid. Any exploitation of Ceritinib by a third party, during the life of the suit patent, therefore, infringes the suit patent, and cannot be permitted. Mr. Hemant Singh put the point pithily in his submission that it is the Divisional Application which is dependent on the suit patent, and not vice versa.*

xxx xxx xxx”

*(Emphasis Supplied)*

19. By way of the additional written statement, the defendant seeks to bring on record all the aforesaid facts. During the course of hearing, it was categorically stated on behalf of the defendant that the defendant seeks to incorporate in the additional written statement, the submissions, as made in the application for vacation of interim injunction. The contention of the plaintiffs that since the Division Application was pending even prior to the institution of the suit, it does not constitute a subsequent development for the purposes of additional written statement, cannot be accepted. The fact regarding the filing of the Divisional Application and its refusal, were not brought before this Court by the plaintiffs. Further, the Divisional Application was refused after the filing of the present suit, which is indeed a subsequent development to the completion of the pleadings in the suit.

20. Additionally, this Court cannot lose sight of the fact that under Order XI Rule 1 (12) CPC, both parties have a continuing obligation to disclose documents, which have come to their notice. Order XI Rule 1 (12) CPC, reads as under:

**“ORDER XI**

***DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS  
IN SUITS BEFORE THE COMMERCIAL DIVISION OF A HIGH  
COURT OR A COMMERCIAL COURT***

*1. Disclosure and discovery of documents: .....*

xxx xxx xxx

(12) *Duty to disclose documents, which have come to the notice of a*



**party, shall continue till disposal of the suit.**

xxx xxx xxx”

(Emphasis Supplied)

21. This Court also rejects the contention of the plaintiffs that the facts sought to be pleaded by the defendant in the additional written statement, have already been adjudicated and rejected *vide* judgment dated 09<sup>th</sup> April, 2024, by which the application of the defendant, I.A. 4636/2023, under Order XXXIX Rule 4 seeking vacation of interim injunction, was dismissed. The findings in the said judgment are only *prima facie* in nature, as the same dealt with the aspect of interim injunction in favour of the plaintiffs. The findings given in the said judgment dated 9<sup>th</sup> April, 2024, are only in the context of adjudicating upon the application for vacation of stay.

22. It is trite that at the stage of interim injunction, the Court only formulates a *prima facie* opinion on the basis of which orders are passed. Therefore, any observation in the judgment dated 09<sup>th</sup> January, 2023 or 09<sup>th</sup> April, 2024, can be only *prima facie* in nature and cannot be considered to be final or conclusive in any manner. Thus, the Supreme Court in the case of ***Martin Burn Ltd. Versus R.N. Bangerjee, 1957 SCC OnLine SC 51***, has held as follows:

“xxx xxx xxx

**27. The Labour Appellate Tribunal had to determine on these materials whether a prima facie case had been made out by the appellant for the termination of the respondent's service. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has,**



*however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. (See Buckingham & Carnatic Co., Ltd. [(1952) Labour Appeal Cases 490].*

xxx xxx xxx”

*(Emphasis Supplied)*

23. Further, it is to be noted that the findings as given in the judgment dated 09<sup>th</sup> April, 2024, are in the context whether the defendant had set out a *prima facie* case under Order XXXIX Rule 4 for vacation of interim injunction dated 09<sup>th</sup> January, 2023. The said findings have no bearing on adjudicating the instant application under Order VIII Rule 9 CPC, since the purpose, standard and outcomes are materially different in fact and in law.

24. The reliance by the plaintiffs on the judgment of ***Hope Plantations Ltd. Versus Taluk Land Board, Peermade and Another, (1999) 5 SCC 590*** is completely misplaced. The said judgment dealt with the consequence of ‘*issue estoppel*’ in relation to final findings on a preliminary issue. However, *prima facie* findings in interim applications are different from final findings on a preliminary issue.

25. Likewise, the contention of the plaintiffs that the issue of validity of suit patent has already been adjudicated finally by IPAB in post-grant opposition filed by the defendant, therefore, the said issue cannot be re-adjudicated in the present suit, as barred by principles of ‘*res judicata*’ and ‘*issue estoppel*’, again does not hold any water. The said issue is a subject matter of final adjudication and not material for deciding the present application. As long as the application under Order VIII Rule 9 CPC is *bonafide* and is *prima facie* of concern to the suit, its final relevance can be tested at the stage of final arguments and not at this stage.

26. Similarly, reliance by the plaintiffs upon the judgment in the case of





*SCG Contracts (India) Private Limited Versus K.S. Chamankar Infrastructure Private Limited and Others, (2019) 12 SCC 210*, is also misplaced. The said judgment was rendered in the context of filing a written statement, wherein, the Supreme Court held that mandatory provisions regarding filing of written statement cannot be circumvented by taking recourse to inherent powers of the Court. The said judgment has no applicability to the present case.

27. Similarly, reliance by the plaintiffs upon the judgment of the Madras High Court dated 12<sup>th</sup> July, 2019 in *Civil Suit No. 282/2018, Novartis AG and Another Versus Venkata Narayana Active Ingredients Private Limited and Others*, is misplaced. The said judgment relates to filing of additional written statement by way of a set off or counter claim. However, that is not the position in the present case. Further, in the said judgment, the defendants therein admitted that counter claim and additional defence could not be taken, due to paucity of time, which was sought to be circumvented by filing of additional written statement along with counter claim. However, in the instant case the defendant seeks to bring on record a subsequent development *qua* plaintiffs' Divisional Application. Therefore, the said judgment of the Madras High Court is clearly distinguishable and not applicable to the facts of the present case.

28. While dealing with the issue of additional pleading, Supreme Court in the case of *Olympic Industries Versus Mulla Hussainy Bhai Mulla Akberally and Others, (2009) 15 SCC 528*, has held as follows:

“xxx xxx xxx

**15. It is also well settled that the courts should be more generous in allowing the amendment of the counter-statement of the defendant than in the case of plaint. The High Court in its impugned order has**



also observed that in order to file an additional counter-statement, it would be open to the defendant to take inconsistent plea. The prayer for acceptance of the additional counter-statement was rejected by the High Court on the ground that while allowing such additional counter-statement to be accepted, it has to be seen whether it was expedient with reference to the circumstances of the case to permit such a plea being put forward at that stage.

xxx xxx xxx

**18. It is also well settled that while allowing the additional counter-statement or refusing to accept the same, the court should only see that if such additional counter-statement is not accepted, the real controversy between the parties could not be decided. As noted herein earlier, by filing an additional counter-statement in the present case, in our view, would not cause injustice or prejudice to the respondents but that would help the court to decide the real controversy between the parties. In our view, the High Court was, therefore, not justified in rejecting the application for permission to file additional counter-statement as no prejudice could be caused to the respondent which would otherwise be compensated in terms of costs.**

xxx xxx xxx”

(Emphasis Supplied)

29. Likewise, the High Court of Madras in the case of ***P. Saraswathi Versus C. Subramaniam, 2013 SCC OnLine Mad 3224***, while dealing with the issue of filing of an additional written statement, has held as follows:

“xxx xxx xxx

**12.** Coming to the next question, it is submitted by the learned Counsel appearing for the Plaintiff that by filing an Additional Written Statement, the Second Defendant is making an attempt to take an inconsistent defence. On a perusal of the materials available on record, I find that in the original Written Statement filed by the Second Defendant, he had merely denied the case of the Plaintiff. But, in the subsequent Additional Written Statement, he is projecting a specific defence with regard to the entitlement of the share of the First Defendant to the extent of 5/6th share in the Suit property and it is only an additional defence and it cannot be treated as inconsistent defence from that of the defence taken in the original Written Statement. Moreover, adding a new ground of defence or substituting or altering a defence is permissible. In this regard, the learned Counsel appearing for the Second Defendant has relied upon the Judgment reported in *Baldev Singh v. Manohar Singh, 2006 (6) SCC*



498, wherein the Hon'ble Supreme Court, in Para 15, has held as follows:

*“15. Let us now take up the last ground on which the Application for amendment of the Written Statement was rejected by the High Court as well as the Trial Court. The rejection was made on the ground that inconsistent plea cannot be allowed to be taken. We are unable to appreciate the ground of rejection made by the High Court as well as the trial Court. After going through the pleadings and also the statements made in the Application for amendment of the Written Statement, we fail to understand how inconsistent plea could be said to have been taken by the Appellants in their Application for amendment of the Written Statement, excepting the plea taken by the Appellants in the Application for amendment of Written Statement regarding the joint ownership of the Suit property. Accordingly, on facts, we are not satisfied that the Application for amendment of the Written Statement could be rejected also on this ground. That apart, it is now well settled that an amendment of a Plaint and amendment of a Written Statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the Rules that the Plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the Written Statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of Written Statement, the courts are inclined to be more liberal in allowing amendment of the Written Statement than of Plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case.”*

*A reading of the dictum laid down by the Hon'ble Supreme Court in the above judgment would show that the inconsistent defence can be raised in the Written Statement although the same is not permissible in the case of the plaint. Therefore, I do not find any force in the submission made by the learned Counsel appearing for the Plaintiff that since already trial has commenced, the Court below ought not to have permitted the Second Defendant to file additional Written Statement. **Under Order 8, Rule 9, C.P.C., wide discretion was given to the Court to give a chance to the parties to agitate their right even by raising subsequent pleas. Moreover, no restriction was imposed with regard to the receiving of the additional Written Statement under Order 8, Rule 9, C.P.C. after commencement of the trial like in the case of amending the Plaint under Order 6, Rule 17, C.P.C.,***



where unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. In this regard, reference could be placed in the Judgment reported in *Muthusamy v. Thangaraj*, 2005 (5) CTC 785. In Paras 8 & 9, it has been held as follows:

“8. True, as seen from the Additional Written Statement, some new pleas have also been taken. Whether this new plea will prevent the Plaintiff from succeeding in the case is a matter to be decided at the time of trial, not at the time of receiving the statement. Therefore, the additional Written Statement, wherein an attempt is made to explain the original statement, giving further particulars, cannot be labelled as entirely a new one, disowning the original case. In this context, we have to see the relevant provisions, namely Order 8, Rule 9, C.P.C. Order 8, Rule 9, C.P.C. reads:

“No pleading subsequent to the Written Statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a Written Statement or additional Written Statement from any of the parties and fix a time of not more than thirty days for presenting the same”

It does not say that no Application for receiving the additional statement shall be allowed, after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial, as provided under Order 6, Rule 17, C.P.C. Proviso. The legislators when amended the C.P.C. thought it fit not to allow the party to have amendment, as a matter of right, that too in a case where they had an opportunity to raise the same, at the time of filing the pleadings. But, when they come to Order 8, C.P.C., no such restriction has been imposed, thereby giving discretion to the Court concerned to allow the subsequent pleadings, for which it is not necessary whether that defence was available on the date of filing of the original Written Statement or not. Under Order 8, Rule 9, C.P.C., power is given to the Court to call for the Written Statement or additional Written Statement from any party, fixing time, not exceeding 30 days, thereby showing the provisions of Order 8, Rule 9, C.P.C. is liberal in its Application, giving wide discretion to the Court, probably to give a chance to the parties, to agitate their right even raising subsequent pleas, for which, the Court should not be rigid. The



**Courts should exercise their discretion liberally, when it will not affect the right of the party.**

9. *In this case, the only grievance, if at all for the Revision Petitioner, as urged before me, must be that when PW1 was in the box, that too pending cross-examination, subsequent pleadings should not be allowed. **By allowing the subsequent pleadings, the right of the Plaintiff is not going to be affected and it is for the Defendant to prove the subsequent pleadings by letting in evidence, since in the original Written Statement, he has opposed the claim of Plaintiff. The Plaintiff can also re-examine PW1, if he desires, with the permission of the Court, even to deny the allegations in the Written Statement. Thus, it is seen, ample opportunity is available to PW1, to deny or accept the case projected in the additional Written Statement, which would go to show, no prejudice would be caused to the Plaintiff, though the Suit is a part heard one. Order 8, Rule 9, C.P.C. does not say, after commencement of trial, no subsequent pleading shall be entertained by the Court, as said in Order 6, Rule 17, C.P.C. Proviso.***

***Keeping the dictum laid down in the above Judgment, I am of the view that under Order 8, Rule 9, C.P.C., wide discretion is given to the Court to receive the Written Statement or additional Written Statement to give opportunity to the parties to agitate the case effectively. Therefore, the rigid principle applicable in the case of amendment of Plaint under Order 6, Rule 17, C.P.C. cannot be applied in the case of receiving additional Written Statement under Order 8, Rule 9, C.P.C. Hence, when there is no restriction with regard to the receiving of the additional Written Statement, no infirmity could be found in the Order passed by the Court below in allowing the Application to permit the Second Defendant to file Additional Written Statement, in the interest of justice. Therefore, for the foregoing reasons, I do not find any valid grounds to interfere with the Order passed by the Court below.***

xxx xxx xxx”

(Emphasis Supplied)

30. Considering the aforesaid discussion, this Court is of the view that no prejudice shall be caused to the plaintiffs if the present application is allowed and the defendant is allowed to file an additional written statement in order to bring on record the facts pertaining to the Divisional Application



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of the plaintiffs.

31. Accordingly, the defendant is granted leave to file an additional written statement to incorporate the facts pertaining to *Divisional Application no. 5338/DELNP/2014* of the plaintiffs, as elucidated by the defendant in its application, *I.A. 4636/2023* under Order XXXIX Rule 4 CPC. It is directed that the defendant shall not incorporate any fresh pleading in the additional written statement, beyond what has already been stated in the application, *I.A. 4636/2023*.

32. The additional written statement shall be filed by the defendant within a period of 30 days from today.

33. The present application is allowed in the aforesaid terms.

**(MINI PUSHKARNA)  
JUDGE**

**JANUARY 08, 2025  
Kr**