

		 2025:AHC:184066-DB
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HIGH COURT OF JUDICATURE AT ALLAHABAD

COMMERCIAL APPEAL No. - 14 of 2025

Jamp India Pharmaceuticals Private Limited	Petitioners(s)
	Versus	
Jubilant Generics Ltd. and 3 others	Respondents(s)

Counsel for Petitioners(s)	:	Shashi Nandan (Sr. Adv.) with Hiren Kamod, Devansh Misra, Raghuvansh Misra, Anup Shukla, Raghav Dev Garg, Ankoosh Mehta, Advait Shukla, Yashvi Agarwal
Counsel for Respondent(s)	:	Rahul Agarwal, Nithin Sharma, Ankit Prakash, Paritosh Joshi

WITH

COMMERCIAL APPEAL No. - 13 of 2025

V S International Private Limited	Petitioners(s)
	Versus	
Jubilant Generics Ltd. and 3 others	Respondents(s)

Counsel for Petitioners(s)	:	Shashi Nandan (Sr. Adv.) with Hiren Kamod, Devansh Misra, Raghuvansh Misra, Anup Shukla, Raghav Dev Garg, Ankoosh Mehta, Advait Shukla, Yashvi Agarwal
Counsel for Respondent(s)	:	Rahul Agarwal, Nithin Sharma, Ankit Prakash, Paritosh Joshi

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

(Per: Kshitij Shailendra, J)

1. These two appeals under Section 13 (1-A) of the Commercial Courts Act, 2015 (in short 'the CC Act'), at the instance of different sets of defendants, assail validity of the order dated 25.02.2025 whereby the Commercial Court, Gautam Budh Nagar has allowed an application seeking temporary injunction filed by the plaintiff-respondent No.1 and rejected the stay vacation application in Original Suit No. 370 of 2024 (Jubilant Generics Ltd Vs. Medreich Limited and three others). The Commercial Court has restrained the defendants from reproducing or using in any manner the copyrights protected Product Dossiers of the plaintiff in relation to the said products for manufacturing, distributing and exporting the said products to any entity and also from sharing with any third party, or using directly or indirectly the plaintiff's confidential information including the Product Dossiers in whole or in part for the said products.

2. Commercial Appeal No. 13 of 2025 has been filed by defendant no. 2, whereas Commercial Appeal No. 14 has been filed by defendant no. 4. No appeal has been filed by defendant nos. 1 and 3. Since common questions of facts and law are involved in these appeals, the same are being decided by a common judgment and, for sake of convenience, Commercial Appeal No.14 of 2025 is being treated as the leading case. Further, the appellant(s) i.e., different sets of defendants, shall hereinafter be referred to as defendant(s) or appellant(s) and the plaintiff-respondent No.1 shall be referred to as the plaintiff or the appellant.

FACTUAL MATRIX

Plaint case:

3. As per the plaint averments, the plaintiff being a company

incorporated and registered under Companies Act, 1956 having its registered office at Gautam Budh Nagar, Noida (U.P.) is a transferee of its pharmaceutical business from the Jubilant Life Sciences Limited. It developed Product Dossiers at its Research and Development Centre, Noida and being a global pharmaceutical company, is engaged in manufacture, sale and distribution of prescription and pharmaceutical products in more than 50 countries. Its dosage formulations manufacturing location at Roorkee, Uttarakhand are approved by global regulatory agencies such as U.S. Food and Drug Administration, Japan's Pharmaceuticals and Medical Devices Agency, U.K. Medicines and Healthcare Products Regulatory Agency, World Health Organization etc.

4. The plaintiff developed technical Dossiers for a range of its products and developed manufacturing formulas for medicines Losartan, Amlodipine, Citalopram, which are said to be generic drugs and, in Canada, before marketing and sale of a product formulation, a distributor was required to obtain Marketing Authorization known as Notice of Compliance ('NOC') along with a Drug Identification Number ('DIN') from the requisite authority, i.e. Health Canada. The plaintiff has developed, through substantial time, expertise and financial investment, comprehensive Product Dossiers for its products. These Dossiers contain highly sensitive, original, and technical data necessary for obtaining regulatory approvals and manufacturing processes. They qualify as 'literary works' under Section 2(o) of the Copyright Act, 1957 and are duly protected. The plaintiff had entered into non-exclusive License Supply and Distribution Agreements with Jamp Pharma Corporation, Canada (in short 'Jamp Pharma' or 'Jamp Canada'), parent entity of the defendants, permitting Jamp Pharma to register, manufacture, market, distribute and sell the products in the territory of Canada

using such Product Dossiers in Canada. The Agreements expressly acknowledge the plaintiff's intellectual property rights in the said Product Dossiers and the contours of the License, as defined in clause 1.1 (b) of the Agreement, read with 2.3 second para and clause 14.3 of the Agreement.

5. Further case is that the defendant no. 4 (appellant in Commercial Appeal No. 14 of 2025) is the Indian offshoot and subsidiary of a Canadian privately owned pharmaceuticals corporation, Jamp Pharma Corporation having its Office at 1380 Newton Street, Suite 203, Boucherville, Quebec J4B 5H2, Canada. Jamp Pharma, keen on acquiring the plaintiff's aforesaid technology and Product Dossiers, approached the plaintiff representing itself to be a leading supplier of generic product formulation in Canada. It was agreed between the plaintiff and Jamp Pharma that the plaintiff would license to Jamp Pharma, a copy of each of its Product Dossiers for the aforesaid products, including all bio-studies, improvements to the molecules, changes made pursuant to any requirement of Health Canada and that Jamp Pharma would acquire a fully paid-up, perpetual, royalty free license and right to manufacture, distribute and sell the products in the territory of Canada using such Product Dossiers containing the technology. Following agreements were signed between the plaintiff and Jamp Pharma:

- (i) Mutual Confidentiality and Non-Disclosure Agreement dated 13.05.2010.
- (ii) Non-Exclusive License, Supply and Distribution Agreement dated 09.02.2012 for Losartan Tablets.
- (iii) Non-Exclusive License, Supply and Distribution Agreement dated 14.05.2014 for Amlodipine Tablets.
- (iv) Non-Exclusive License, Supply and Distribution

Agreement dated 16.05.2014 for Citalopram Tablets.

6. The plaintiff, in terms of the aforesaid Agreements, provided *inter-alia*, the Product Dossiers to Jamp Pharma. A dispute arose between the plaintiff and Jamp Pharma that led Jamp Pharma to invoke arbitration proceedings against the plaintiff before the International Court of Arbitration. During the pendency of arbitration proceedings, on 02.04.2024, Mr. Sukhad Juneja, Senior Vice President Global Portfolio & Scientific Affairs of Jamp Pharma, filed an affidavit in the arbitration proceedings categorically admitting that Jamp Pharma transferred the technology contained in the said Product Dossiers to the Appellant- defendant No. 4. This admission evidences that the plaintiff's confidential Dossiers were misappropriated and commercially exploited in India, thereby constituting copyright infringement and breach of contractual as well as fiduciary obligations. The plaintiff discovered that, in breach of the said contractual arrangements, Jamp Pharma had clandestinely shared the proprietary and confidential Product Dossiers with its Indian affiliate, Jamp India Pharmaceuticals Pvt. Ltd. (defendant No. 4 in the Suit), and further caused them to be used by Medreich Ltd., VS International Pvt. Ltd., and Gracure Pharmaceuticals Ltd. (defendants No. 1 to 3 in the Suit) for manufacturing the said products in India.

7. The Suit was filed upon such discovery and subsequent investigations which revealed that the defendants were using the plaintiff's proprietary and confidential Dossiers to manufacture pharmaceutical products in India, and thereby (i) infringing the plaintiff's copyright, (ii) violating the confidential nature of such Dossiers, and (iii) unjustly enriching themselves by commercial exploitation of plaintiff's copyrighted Product Dossiers. The plaintiff claimed decree for permanent injunction restraining the defendants

from using or misappropriating the plaintiff's Product Dossiers in any manner; manufacturing and distributing Amlodipine and Citalopram based on the said Dossiers and interfering with the plaintiff's proprietary and contractual rights; also claimed relief of damages, rendition of accounts and ancillary directions on the ground of copyright infringement, breach of confidentiality, and misappropriation of trade secrets. Alongwith suit, an application under Order XXXIX Rules 1 and 2 CPC seeking temporary injunction was also filed. On 23.08.2024, the Commercial Court granted an *ex parte* ad-interim injunction in favour of the plaintiff,

Defence:

8. The defendants contested the application for interim injunction by filing applications/objections under Order XXXIX Rule 4 CPC seeking vacation of the *ex-parte* injunction stating that the suit as well as injunction application for alleged infringement and breach of confidentiality was misconceived as the products were being manufactured in India by the defendants pursuant to fully paid-up, perpetual, royalty free and transferable non-exclusive licence in favour of Jamp Pharma; issue of alleged infringement had already been raised by the plaintiff before an Arbitral Tribunal being I.C.C. Case 24845/MK/PDP, titled as Jamp Pharma Corporation Vs. Jubilant Generics Limited; the dispute is purely a contractual dispute between Jamp Pharma and the plaintiff and is not of copyright infringement dispute and, therefore, it ought to be referred to arbitration as provided under the licence agreements; three licence agreements having expired due to efflux of time, the plaintiff has no case; Jamp Pharma is at liberty to 'manufacture' or 'have manufactured' the said products from any third party as they desire; the suit was filed three years of the expiry of licence agreements; the fact of manufacturing by the defendants is known to the plaintiff

since 2021 or at least since April, 2024 as evident from the emails placed on record by the plaintiff; the licence acquired by Jamp Pharma was fully paid-up, perpetual, royalty free and a non-expensive transferable licence; mandatory requirement of pre-institution mediation contemplated under Section 12-A of the Act, 2015 has not been complied with and the plaintiff neither has a *prima facie* case, nor balance of convenience lies in its favour nor would it suffer irreparable loss on account of activity of the defendants.

A previous order by the Commercial Court and proceedings before this Court:

9. By an order dated 07.11.2024, the District Judge, being in-charge of Commercial Court due to occurrence of vacancy therein, directed continuation of injunction during the pendency of the suit and rejected the defendants' plea for vacating the same. The defendant No. 4 preferred FAFOD No. 21 of 2025 before this Court assailing the order dated 07.11.2024. By order dated 23.01.2025, the appeal was partly allowed setting aside the order dated 07.11.2024 on the ground that the Commercial Court had not recorded specific findings on the three essential ingredients, viz existence of a *prima facie* case, balance of convenience and irreparable injury. The matter was remanded back to the Commercial Court for a fresh consideration. Upon remand, the Commercial Court has passed the order impugned in these appeals.

Learned counsel heard:

10. Heard Shri Shashi Nandan, learned Senior Counsel assisted by Shri Hiren Kamod, Shri Raghuvansh Misra, Shri Devansh Misra, Shri Anup Shukla, Shri Raghav Dev Garg, Shri Ankoosh Mehta, Shri Advait Shukla and Ms. Yashvi Agarwal,

Advocates for the defendant-appellants in both the appeals and Shri Rahul Agarwal, Shri Nithin Sharma, Shri Ankit Prakash and Shri Paritosh Joshi, Advocates, for plaintiff-respondent. Parties have also filed written submissions. We have considered their oral as well as written submissions and have perused the material available on record.

SUBMISSIONS ON BEHALF OF THE DEFENDANT-APPELLANTS

11. First submission is that non-compliance of provisions of Section 12-A of the CC Act, 2015 vitiates the injunction order as the mandatory pre-institution mediation requirements under Section 12-A were given a go by. Contention is that paragraphs 23 and 24 of the plaint reveal that the plaintiff had knowledge of the manufacture of Citalopram and its case is that alleged unauthorized use of Product Dossiers was borne out from emails exchanged in July 2021, i.e., based on emails dated June 22, 2021. This belies any claim of surprise or emergent circumstances. Having failed to act for over three years, the plaintiff cannot now claim urgency to seek interim relief and try to bypass the requirements of Section 12-A. The plaintiff has improvised its case that the 2021 Emails only show sourcing from India, not use of Product Dossiers, though it is not their case in the plaint or documents annexed thereto, rather is contradicted by paragraph 24 of the plaint, which states that the manufacture and supply of products based on the Dossiers can be borne out from the same emails. Such post facto improvisation undermines the claim of urgency and demonstrates clever drafting to create a camouflage of urgency to overcome the Section 12-A requirement.

12. Further submission is that according to the plaintiff, the cause of action for filing suit arose on April 2, 2024, when Mr.

Sukhad Juneja's affidavit was filed in the Foreign Arbitration but the Suit was filed only in August 2024 which demonstrates a delay of over four months and the plaint offers no credible justification for the delay. The finding rendered by the Commercial Court in respect of the Appellant's arguments on July 2021 emails and April 2024 affidavit that the cause of action is a continuing one, is contradictory to Respondent No. 1's stand on urgency. A continuing cause of action is only relevant to limitation period within which a suit may be filed and has no relevance to Section 12-A of the CC Act, for the purpose of deciding whether the mandate of Section 12-A of the CC Act has been satisfied. Reliance has been placed on **Patil Automation Private Limited & Ors. vs. Rakheja Engineers Private Limited: (2022) 10 SCC 1** and **Yamini Manohar v. TKD Keerthi: (2024) 5 SCC 815**, and it is submitted that an urgent interim relief must be emergent, not merely convenient and courts must scrutinize the plaint and annexed documents for "falsity," "deception," or "clever drafting."

13. Further submission has been made that the suit being a composite suit is not maintainable as it consisted of two independent and distinct causes of action, namely, violation of confidential information and infringement of copyright. The cause of action for infringement of copyright is independent of the cause of action for breach of confidentiality. The Commercial Court's jurisdiction has been invoked under Section 62 of the Copyright Act which provision applies only to suits for copyright infringement and not to claims for breach of confidentiality. For adjudicating on the claims of breach of confidentiality, the Commercial Court ought to have jurisdiction under Section 20 of the Code of Civil Procedure, 1908. While the plaintiff's place of business is in Gautam Buddha Nagar, defendant Nos. 1 to 4 have their places of business in Bangalore (Karnataka),

Mumbai (Maharashtra), West Delhi (New Delhi) and Ahmedabad (Gujarat) respectively, beyond the territorial limits of jurisdiction of Commercial Court Gautam Budh Nagar.

14. Submission has been made that while Section 62 allows a plaintiff to file a copyright infringement suit at its place of business, it does not extend to claims for breach of confidentiality, which are governed by Section 20 of the CPC. Under Section 20 of CPC, the suit must be filed *inter alia* either (i) where the defendants reside or carry on business, or (ii) where the cause of action arises. None of the defendants either has its place or is carrying on its business in Noida. The defendants do not have any satellite/branch office in Noida. Hence, sections 20 (a) and (b) C.P.C. are not applicable in the present case.

15. Submission has been made that for violation of confidential information, plaintiff has invoked the jurisdiction of the Commercial Court by relying on Section 20(c) of the CPC, asserting that the Product Dossiers were prepared by the plaintiff in Noida. Mere preparation of Product Dossiers in Noida does not and cannot give rise to any cause of action or part thereof against the defendants. The act of preparing Product Dossier by the plaintiff is an internal activity of the plaintiff and does not constitute a legal wrong or actionable event *vis-a-vis* the defendants. The cause of action, if any, would arise at the location where the alleged use, reproduction, manufacturing, distribution, marketing, or sale of the products based on the Product Dossiers occurred. Respondent No. 1 has not alleged that any such activity took place in Noida. In absence of any part of the cause of action arising in Noida, the Commercial Court lacks jurisdiction to entertain the suit for cause of action for violation of confidential information and, therefore, granting injunction in a suit *qua* which the Court has no territorial jurisdiction, is not at all

tenable. Reliance has been placed on **Paragon Rubber Industries v. Pragathi Rubber Mills** :(2014) 14 SCC 762, **Dhodha House v. S.K. Maingi** : (2006) 9 SCC 41 and **Dabur India Ltd. v. K.R. Industries's** : (2008) 10 SCC 595.

16. Further submission is that the entire dispute, as per plaintiff, arises from an alleged breach of confidentiality, a contractual issue, premised on the assertion that the Product Dossiers cannot be used outside India under the License Agreements. Though styled as a copyright infringement action, the suit is, in substance, a disguised claim for breach of contract. In the absence of any direct contractual relationship between the plaintiff and the defendants, the Commercial Court lacks jurisdiction to adjudicate allegations of breach of confidentiality. The plaint does not disclose any actionable claim under the Copyright Act, rather the allegations are rooted in the terms of the License Agreements, making it a contractual dispute. The suit, therefore, fails to establish a cause of action under copyright law.

17. It has further been submitted that plaintiff's claim of copyright in the Product Dossiers is fundamentally flawed. It is plaintiff's own case that the Product Dossiers consist of scientific data, chemical formulations, and factual information relating to generic drugs. However, the plaintiff has failed to establish any creativity in the said Product Dossier. Relying on **Eastern Book Company v. D.B. Modak: (2008) 1 SCC 1**, submission has been made that a minimal degree of creativity is essential for copyright to subsist. Mere compilation of facts or scientific processes, however laborious, does not meet this threshold. Product Dossiers can at best be technical documents but cannot be original literary works. Granting copyright protection over such material would amount to indirectly conferring monopoly rights over the products themselves,

which is impermissible under law, particularly when the plaintiff does not hold any patent over the products, which are admittedly generic.

18. Further contention is that there is no pleading or evidence demonstrating the originality of the Product Dossiers. Relying on **Dr. Reckeweg & Co. GmbH v. Aven Biotech Pvt. Ltd. : 2008 SCCOnline Del 1741**, submission has been made that originality must be specifically pleaded and proved. The plaintiff has failed to do either. The plaint is silent on how the Product Dossiers are original or how they reflect the author's skill and judgment beyond mere compilation of scientific data. The attempt of plaintiff to claim copyright over the Product Dossiers is a backdoor attempt to secure exclusivity over the Products themselves, something it cannot achieve under patent law. This is a misuse of copyright law which is not intended to protect scientific inventions or formulations.

19. Further submission is that assuming (though denying) that any copyright subsists in the Product Dossiers, the plaintiff has failed to establish infringement under Section 14 read with Section 51 of the Copyright Act. It is not the plaintiff's case that the defendants have reproduced the Product Dossiers in any tangible form and the plaintiff has failed to demonstrate storage of the work by the defendants in any medium. Mere use of the technology purportedly described within the Product Dossiers does not amount to reproduction of the Product Dossiers. Even if it is assumed that the Product Dossiers were made available to the defendants, the same does not amount to reproducing the work, storing the work, issuing copies of the work to public, and hence, there is no question of infringement of copyright by the defendants. The allegation that the defendants manufactured and supplied Products by using the technology from the Product Dossiers (Para 38 of the plaint) does

not and cannot constitute infringement. Copyright protects the expression of ideas, not the underlying technology or know-how. Reliance has been placed on **University of Oxford v. Rameshwari Photocopy Services: 2016 SCCOnline Del 5128**.

20. Further submission is that no cause of action ever arose against the defendants as the only entity that has reproduced and shared the Product Dossiers is Jamp Pharma, under the terms of the license agreements. Any alleged infringement lies against Jamp Pharma, not the defendants to the Suit. The defendants do not claim any independent right to manufacture from Product Dossiers. The rights of defendants only flow from the rights possessed by Jamp Pharma. If the plaintiff fails in the arbitration with Jamp Pharma, there cannot be any injunction against defendants as their rights are flowing through Jamp Pharma.

21. Further submission is that the plaint alleges that the Product Dossiers were licensed exclusively for use within Canada. This is a triable issue in the pending arbitration proceedings requiring interpretation of foreign law-governed license agreements. The impugned order records findings on Jamp Pharma's contractual rights, stating that "Jamp Pharma can get the products manufactured using the plaintiff's Product Dossier from any person, as long as the same is manufactured in the territory of Canada". This is a direct adjudication of Jamp Pharma's rights and obligations under the License Agreements, without Jamp Pharma being a party to the suit. Such findings are legally unsustainable and violate principles of natural justice.

22. Further submission is that the reliefs sought in the suit are inseparable from Jamp Pharma's conduct and rights under the License Agreements. The defendants are not parties to these agreements and cannot be held liable for any alleged breach thereof.

The defendant No.1 is merely a subsidiary of Jamp Pharma, not its agent and cannot be made liable for Jamp Pharma's contractual obligations. The License Agreements are governed by foreign law and their interpretation cannot be undertaken by the Commercial Court in the absence of the contracting party. The appropriate forum for adjudicating the present dispute is the foreign arbitration proceedings in Canada, where the License Agreements are governed and where the core issues, i.e., alleged unauthorized use of Product Dossiers and breach of confidentiality are already being litigated. The plaintiff itself has raised the allegations of tech transfer and use of alleged intellectual property (which is the subject matter of the present suit) before the Arbitrator. Therefore, the present Suit is a forum-shopping exercise, designed to bypass the agreed dispute resolution mechanism and to secure reliefs that are otherwise unavailable.

23. Relying on **Bharat Aluminum Co. v. Kaiser Aluminum Technical Services Inc. : (2012) 9 SCC 552**, submission has been made that that no suit in India is maintainable if it touches upon the merits of a foreign arbitration that is pending. Even though the principles laid down by BALCO are in context of inter party suit, the same would also apply in the present case where the cause of action in the suit will be contingent on the interpretation and enforcement of the License Agreements, which are already under adjudication in arbitration. Therefore, any finding by the Commercial Court on these issues risks irreconcilable and contradictory determinations, undermining the integrity of both proceedings. The impugned order is completely silent on this critical issue, despite the pendency of arbitration being specifically brought to the Court's attention. It is, therefore, prayed that the impugned order may be set aside.

SUBMISSIONS ON BEHALF OF PLAINTIFF-RESPONDENT

24. It has first been submitted that the defendants' reliance on Section 12-A of the CC Act is misplaced as the suit has been instituted seeking urgent interim reliefs against continuing acts of copyright infringement and breach of confidentiality. Once such urgent relief is prayed for, Section 12-A carves out an exception dispensing with the requirement of pre-institution mediation. The Commercial Court, by its earlier order dated 23.08.2024, was satisfied that such urgency existed and, accordingly, granted an ad-interim injunction. Reliance was placed on **Patil Automation Private Limited (supra)** and **Yamini Manohar (supra)** and **Y-Not Films LLP v. Ultra Media : 2024 SCCOnline Bom 3085** and submission has been made that the question of compliance of Section 12-A arises only at the stage of registration of the plaint. Once the plaint has been admitted and interim orders have been passed after hearing both parties, it is no longer open to challenge the maintainability of the suit on this ground.

25. Further submission is that the plaintiff's case rests upon its ownership of original Product Dossiers for the pharmaceutical drugs/products, viz Losartan, Amlodipine and Citalopram. These Product Dossiers is a result of years of extensive research and substantive investment, constitute and are protectable as original 'literary works' under the Copyright Act, 1957. These Dossiers were shared with Jamp Canada under strict confidentiality and territorial limitations but in blatant violation of such restrictions, Jamp Pharma transferred the Dossiers to its Indian subsidiary, the defendant No. 4, which, in turn, facilitated their use by defendant Nos. 1 to 3 for manufacturing and use in India. Dossiers comprise detailed compilations of technical data, clinical results, formulations, and processes, embodying the plaintiff's skill, labour, and judgment and being

scientific compilations prepared through exercise of significant skill, judgment and discretion, thereafter reduced into writing and embodying valuable know-how, fall squarely within definition under section 2(o) of the Act, 1957 and contrary submissions are misconceived.

26. Submission is that the Hon'ble Supreme Court in **Eastern Book Company v. D.B. Modak, AIR 2008 SC 809** has clarified that where a work is created with the application of a 'minimum degree of creativity,' it qualifies for copyright protection and that the work need not be in an original form or novel form, but it should not be copied from another's work. It is contended that the Madras High Court, in **Salgunan N. v. Ram Gopal Edara, MANU/TN/9246/2019**, applied this principle to technical and business documents, holding that compilations prepared with intellectual effort and skill are entitled to protection. Under Section 13 of the Act, copyright subsists in original literary works, and Section 14 vests in the copyright owner the exclusive rights of reproduction and communication. Therefore, the plaintiff's Product Dossiers are protected literary works in which copyright subsists by operation of law. The defendants have not disputed the existence of the Product Dossiers, nor that they were created by the plaintiff. The admitted conduct of the defendants, who are utilising the plaintiff's Dossiers for manufacturing drugs in India and in this process, inevitably reproducing, storing and/or adapting the said Dossiers, squarely constitutes infringement within the meaning of Section 51 of the Act, 1957. Moreover, defendant No. 4 has been distributing such Product Dossiers for the purpose of trade to defendant Nos. 1, 2 and 3, which acts are ex facie prejudicial to the plaintiff, who is the rightful owner of the copyright in the said Product Dossiers,

27. It is further submitted that Clauses 1.1(b) and 2.2 of the

Agreements specifically restrict their use in and to the Canadian territory. Under clause 1.4 of the Agreement, except to the extent granted, all rights to the intellectual property are retained by the Respondent. 'Territory' has been defined in the respective agreements as Canada only. Thus, even in the absence of any document on record to indicate that such right has been granted by Jamp Pharma, it has authorised use of the plaintiff's Product Dossiers in India and such authorisation would be contrary to the terms of the Agreements.

28. As regards arbitration proceedings, submission has been made that the appellant's plea that the present dispute ought to be referred to arbitration is wholly misconceived and legally untenable. The plaintiff's claim arises from infringement of its statutory rights in its copyright-protected Product Dossiers, which constitute original literary works under Section 2(o) of the Act. Such rights are rights *in rem*, enforceable against the world at large, and not merely contractual rights enforceable inter-se parties. Original issues in dispute referred to arbitration are as follows and alien to the issues involved in the suit:

- (i) Are the Respondents in default of any obligations pursuant to the agreements?
- (ii) Are the obligations of JGL extinct as a result of events of Force Majeure?
- (in) Is JAMP limited in terms of claimable damages by any contractual limitations of liability clauses or other legal principles?
- (iv) When were the agreements stood terminated?
- (v) Is JAMP liable for any amounts owed or damages pursuant to the agreements?

29. Placing reliance on **Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. (2011) 5 SCC 532**, it has been argued that the disputes relating to rights *in rem* are non-arbitrable, inasmuch as

such rights require adjudication by public for exercising sovereign judicial powers. This principle was reaffirmed in **Vidya Drolia v. Durga Trading Corporation (2021) 2 SCC 1**, where the Hon'ble Supreme Court drew a clear distinction between 'rights in rem' and 'rights in personam', holding that intellectual property disputes involving statutory rights cannot be the subject matter of arbitration. For the proposition that copyright is a 'right in rem' and dispute relating to the existence/validity of copyright is non-arbitrable, the plaintiff has relied on the judgments of **Nagpur Distilleries Pvt. Ltd. Vs. Karmaveer Shankarrao Kale MANU/MH/2340/2017**, **Vikas Sales Corporation & Ant. Vs. Commissioner of Commercial Taxes (1996) 4 SCC 433**, **A. Ayyasamy Vs. A Paramasivam & Ors. (2016) 10 SCC 386**, **IPRS Vs. Entertainment Network (India) Ltd. MANU/MH/1597/2016**, **Eurokids International Pvt. Ltd. Vs. Bhaskar Vidhyapeeth Shikshan Sanstha 2016 (5) ALLMR 758**, **Golden Tobacco Ltd. V. Golden Tobie Pvt. Ltd. MANU/DE/2461/2021** and **Hero Electric Vehicles Pvt. Ltd. v. Lectro E-Mobility Pvt. Ltd. & Anr., 2021 SCC OnLine Del 1051**.

30. Further submission is that once the defendants have themselves disputed the plaintiff's authorship and the subsistence of copyright in the Product Dossiers, such questions cannot be left to private arbitration *inter-se* parties to the dispute. The jurisdiction of the Commercial court in such matters is, therefore, exclusive and cannot be ousted by reference to an arbitration clause.

31. As regards maintainability of the composite suit and jurisdiction, it is submitted that the present suit is primarily one for infringement of copyright under Section 51 of the Copyright Act, 1957, arising from unauthorized use and exploitation of the plaintiff's Product Dossiers by the defendants. Once it is established

that the plaintiff has a statutory right in the Product Dossiers as original literary works, the cause of action for infringement stands established and squarely falls within the jurisdiction of the Commercial Court in view of Section 62 of the Act. The fact that the plaintiff also seeks ancillary/incidental reliefs in respect of breach of confidentiality and misuse of trade secrets, the same does not detract from its essential and predominant character as a copyright infringement suit. These additional reliefs are purely incidental to the main relief of copyright protection.

32. It is further submitted that copyright is a bundle of exclusive rights statutorily conferred under Section 14 of the Copyright Act, 1957 and the element of confidentiality embedded in a literary work, such as the plaintiff's Product Dossiers, is merely one facet of the broader copyright. It is entirely within the prerogative of the copyright owner to determine whether or not to disclose or share such confidential information which is vested in the copyright. Accordingly, the reliefs concerning confidentiality are not separate or independent causes of action but flow directly from and are subsumed within the plaintiff's copyright in the Product Dossiers.

33. It is also contended that a plaint must be examined on a demurrer, vide **Vinod Infra Developers Ltd. z. Mahaveer Lunia, 2025 AIR 2025 SC 2933**, wherein the Hon'ble Supreme Court found wholesome rejection of the plaint as unsustainable without appreciating by the High Court that the reliefs claimed flowed from multiple and distinct causes of action. This precedent directly answers untenable nature of the defendants' contention that the plaint must be rejected as it seeks reliefs related to breach of confidentiality/trade secrets, while the maintainability of the copyright infringement claim is undisputed. Needless to say, the Plaint must be treated as an indivisible whole, and since its dominant

character is a copyright action, it is maintainable in its entirety.

34. Relying on **Dabur India Ltd.** (supra), submission has been made that if the plaint also seeks incidental relief in addition to the main relief, both can be considered and exercised in view of the ultimate relief which may be granted by the Court. Once copyright infringement is the core relief, incidental or ancillary reliefs, whether based on confidentiality, trade secrets, or passing off, do not affect maintainability of the suit as a whole. Reliance is placed on **Zee Telefilms Ltd. Vs. Sundial Communications Pvt. Ltd. And Ors. 2003 SCC OnLine Bom 344** and **Tarun Wadhwa Vs. Saregama India Ltd.: (2021) 88 PTC 423**.

35. Learned counsel also raised objection regarding the very challenge made to jurisdiction of the Commercial Court by contending that the defendants never challenged the jurisdiction or maintainability of the suit in their pleadings or even in FAFOD No. 21 of 2025 filed before this Hon'ble Court. The replies and/or applications do not even contain a whisper of raising any objection to maintainability or jurisdiction. The defendants cannot now be permitted to belatedly raise objections which were never urged before the Commercial Court and which the Commercial Court had no occasion to deal with. It is further submitted that the cause of action has squarely arisen within the jurisdiction of the Commercial Court at Gautam Budh Nagar, inasmuch as the defendants are actively promoting their products within the said jurisdiction. The defendant No. 2 participated in the 10th Edition of the International Pharmaceutical Exhibition (iPHEX) 2024 held at Greater Noida from 28.08.2024 to 30.08.2024, and distributed brochures advertising Amlodipine, one of the three pharmaceutical products which are the subject matter of the suit and which have been manufactured on the basis of the plaintiff's Product Dossiers. The plaintiff has brought on

record an affidavit to this effect affirming that its authorised representative personally visited the stall of defendant No. 2 during the said exhibition and obtained brochures wherein the impugned products were expressly advertised. This evidences that the acts of infringement and commercial promotion of the products took place within the territorial jurisdiction of the Commercial Court, thereby conferring jurisdiction to entertain and adjudicate the present proceedings.

36. As regards emails, it submitted that those emails of 2021 are wholly irrelevant as the same were exchanged between the representatives of the Appellants and merely deal with or refer to consignments relating to the citalopram products, however, they nowhere mention or disclose any use of the intellectual property rights vested in the plaintiff's Product Dossiers. The cause of action arose only upon the categorical admission made by Jamp Pharma's witness, Mr. Sukhad Juneja, on 02.04.2024 that the technology transfer had been implemented in favour of the defendant No. 4 and further transferred to defendant Nos. 1 to 3.

37. Lastly, it is contended that the impugned order has been passed after a comprehensive consideration of the parties' pleadings, documents, and rival submissions, pursuant to the remand order passed by this Hon'ble Court and represents a well-reasoned and balanced adjudication that carefully applies settled legal principles to the facts on record and, hence, no interference is warranted.

APPELLANT'S SUBMISSIONS IN REJOINDER

38. Responding to the submissions made on behalf of the plaintiff, it is contended on behalf of the appellants that the objection that appellants cannot now challenge the Commercial Court's satisfaction under Section 12-A is misconceived as the Hon'ble

Supreme Court in **Patil Automation Private Limited** (supra) has clarified that the issue of maintainability due to non-compliance with Section 12-A must be adjudicated independently by the Court, and not merely recorded *ex parte*. The earlier order dated 23.08.2024 passed by the Commercial Court contains no reasoned satisfaction of urgency and only a mechanical reference to the interim injunction application has been made. The appellants raised objections to the bypassing of Section 12-A at the earliest opportunity in their reply to the injunction application and in the injunction vacation application as such there is no delay. The challenge has been consistently maintained before the Commercial Court and also before this Hon'ble Court in FAFOD No. 21 of 2025 and is now part of this appeal. It is settled law that all available grounds can be raised in appeal. The impugned order cannot be challenged in piecemeal, and therefore, Respondent No. 1's argument requiring a separate petition rising a challenge to the order dated 23.08.2024 is procedurally incorrect. Additionally, reliance has been placed on **Dhanbad Fuels (P) Ltd. v. Union of India, 2025 SCCOnline SC 1129**, laying down that the stage of proceedings is irrelevant when rejecting a plaint for non-compliance with Section 12-A.

39. Regarding challenge to jurisdiction, submission is that the suit being a composite suit and its non-maintainability being purely a question of law, the same can be raised at any stage of proceedings and grounds No. 23 to 33 to this effect have been specifically raised in the memo of appeal.

40. Respondent No. 1's reliance on **Y-Not Films LLP** (supra), is said to be misplaced. There is no blanket bar on application of Section 12-A in cases of intellectual property rights matters. In fact, the Hon'ble Bombay High Court in **Y-Not Films LLP** (supra) (Para 64) expressly held that even in IP suits Section 12-A applies and a

plaint may be rejected under Order VII Rule 11 CPC where deception or falsity is apparent. In the present case, the Respondent falsely claimed urgency and exemption from Section 12-A of CC Act by merely stating that the cause of action arose in April 2024, despite having knowledge since July 2021. Further, **Midas Hygiene Industries (P) Ltd. v. Sudhir Bhatia, (2004) 3 SCC 90** and **Laxmikant V. Patel vs. Chetanbhai Shah and another: (2002) 3 SCC 65** are inapplicable to the present case as they do not address the threshold issue of maintainability under Section 12-A.

41. Further, on jurisdiction, the argument raised by the respondent that assuming that if the court does not have jurisdiction to try breach of confidentiality, it may not dismiss the Suit or return the plaint, but the Court may continue with the Suit as far as infringement of copyright, is said to be completely misplaced and in the teeth of **Dabur India Ltd. (supra)** and **Dhodha House (supra)**, as in both these cases, the suit was dismissed/plaint was rejected. Reliance placed by the respondent on **Vinod Infra (supra)**, **Ramakant Ambalal Choksi v. Harish Ambalal Choksi: (2024) 11 SCC 35**, **Ramrup Goshian and Ors. v. Ramdhari Bhagat and Ors: AIR 1925 All 683**, **Zee Telefilms Lid v Sundial Communications Pvt. Ltd.: (2003) 5 Bom CR 404** and **Tarun Wadhwa (supra)** is also stated to be misplaced.

42. Submission is that the respondent's argument that copyright is a 'right in rem' and hence non-arbitrable based upon judgments in **Nagpur Distilleries (supra)**, **Vikas Sales Corporation (supra)**, **Ayyasamy (supra)**, **Vidya Drolia (supra)**, **Golden Tobacco Ltd. (supra)**, and **IPRS (supra)**, is entirely irrelevant to the present dispute. The appellants have not argued that the Suit should be referred to arbitration as the same would be legally untenable, as there is no arbitration agreement or privity of contract between the

plaintiff and the defendants. The argument is simply that the core issues of breach of the License Agreements and unauthorized use of Product Dossiers are already being adjudicated in arbitration and the Suit is, therefore, premature and impermissible. In any event, the disputes emanating from the License Agreements, for example, termination of license agreement, authorized or unauthorized use etc, are to be decided between the parties and not any third parties. Thus, it cannot be said that the present dispute relates to right in rem and not right in personam.

FINDINGS RECORDED BY THE COMMERCIAL COURT

43. The Commercial Court, while granting interim injunction, has observed that the Product Dossiers of the plaintiff were extensive compilations covering the complete life cycle of pharmaceutical formulations, involving judgment, research and analysis; that the plaintiff's claim to copyright was substantive and akin to a right in law, not displaced by any evidence from the defendants; that a mutual confidentiality and non-disclosure agreement of 13.05.2010 and subsequent non-exclusive licensing agreements with Jamp Canada lend support to the plaintiff's ownership of the Dossiers. The objection based upon Section 12-A was rejected having found that the plaintiff disclosed urgent interim reliefs and that the Court had already exercised its discretion in granting ad-interim order earlier. On limitation and cause of action, the Commercial Court found that although certain email trails between the plaintiff and Jamp Canada were of 2021, the real trigger or cause of action to institute the Suit proceedings arose only on 02.04.2024, when Jamp Canada's witness Mr. Sukhad Juneja, in his affidavit, categorically admitted that Jamp Canada along with its Indian associates had implemented technology transfer in favour of the defendant Nos 1-3 Indian manufacturers.

44. The Commercial Court analysed the Agreements between

the plaintiff and Jamp Canada and concluded that the rights granted to Jamp Canada were territorially confined to Canada. The right to register, manufacture, market and distribute was held to be limited to the Canadian territory and even post-termination right to manufacture and sell was restricted to Canada alone. The Court held that the said products could not be manufactured in India under the terms of the agreement. It further recorded that the Indian manufacturers were not parties to the Agreements or arbitral proceedings between the plaintiff and Jamp Canada, thereby underscoring the plaintiff's claim that the Dossiers were being exploited in India without any authority.

45. On the question of balance of convenience, the Commercial Court held that the Dossiers were the incorporeal property of the plaintiff and that any unauthorised third-party access could not be compensated in damages and held that the defendants had intruded into the plaintiff's rights in an unauthorised manner. Finally, the Commercial Court held that risk of irreparable harm being caused and having already been caused to the plaintiff was made out. The commercial and pecuniary interests of the defendants were deemed to yield to the statutory rights of the plaintiff.

DISCUSSION AND FINDINGS

Principles governing grant of temporary injunction

46. First of all, we deem it appropriate to state general principles governing grant of temporary injunctions. It is well settled that at the stage of considering an application for temporary injunction, a 'mini trial' of the suit itself is not to be conducted, rather the adjudication is made based upon three basic ingredients, i.e. *prima facie* case, balance of convenience and irreparable loss. The principles for grant of interim injunctions have been well stated by

Hon'ble Supreme Court in **Anand Prasad Agarwalla v. Tarkeshwar Prasad & Ors.**, AIR 2001 SC 2367, **State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha** (2009) 5 SCC 694, **S.M. Dyechem Ltd. v. Cadbury (India) Ltd.**, AIR 2000 (SC) 2114, **Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.**, 1999 AIR (SC) 3105.

47. In **Zenit Mataplast P. Ltd. v. State of Maharashtra and others**, JT 2009 (12) SC 240, the Hon'ble Supreme Court considered the principles for grant of interim relief and held that interim order is passed on the basis of *prima facie* findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The object of the interlocutory injunction is, to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.

48. Very recently the Hon'ble Supreme Court, in **Pernod Ricard India Private Limited and another vs. Karanveer Singh Chhabra**: 2025 SCC OnLine SC 1701, again summarized the law governing grant of injunction in suits filed for infringement of intellectual property rights and, in paragraph Nos. 36, 36.2 and 36.3, (in case of a suit under the Trade Marks Act, 1999) observed as under:-

“36. The Trade Marks Act, 1999 does not prescribe any rigid or exhaustive criteria for determining whether a mark is likely to deceive or cause confusion. **Each case must necessarily be decided on its own facts and circumstances, with judicial precedents serving to illuminate the applicable tests and guiding principles rather than to dictate outcomes.**

* * * * *

36.2. The grant of injunction whether for infringement or passing off is ultimately governed by equitable principles and is subject to the general framework applicable to proprietary rights. Where actual infringement is established, that alone may justify Injunctive relief; a plaintiff is not expected to wait for further acts of defiance. As judicially observed, "*the life of a trademark depends upon the promptitude with which it is vindicated.*"

36.3. The principles laid down in *American Cyanamid Co. v. Ethicon Ltd. (1975) AC 396* continue to guide the Courts while determining interim injunction applications in trademark cases. The following criteria are generally applied:

- (i) **Serious question to be tried/triable issue**: The plaintiff must show a genuine and substantial question fit for trial. It is not necessary to establish a likelihood of success at this stage, but the claim must be more than frivolous, vexatious or speculative.
- (ii) **Likelihood of confusion/deception**: Although a detailed analysis of merits is not warranted at the interlocutory stage, courts may assess the prima facie strength of the case and the probability of consumer confusion or deception. Where the likelihood of confusion is weak or speculative, interim relief may be declined at the threshold.
- (iii) **Balance of convenience**: The court must weigh the inconvenience or harm that may result to either party from the grant or refusal of injunction. If the refusal would likely result in irreparable harm to the plaintiff's goodwill or mislead consumers, the balance of convenience may favor granting the injunction.
- (iv) **Irreparable harm**: Where the use of the impugned mark by the defendant may lead to dilution of the plaintiff's brand identity, loss of consumer goodwill, or deception of the public -harms which are inherently difficult to quantify the remedy of damages may be inadequate. In such cases, irreparable harm is presumed.
- (v) **Public interest**: In matters involving public health, safety, or widely consumed goods, courts may consider whether the public interest warrants injunctive relief to prevent confusion or deception in the market place."

(emphasis supplied)

49. Now, for clarity, we proceed to discuss the issues involved in the present case under different heads, as argued by both sides.

COMPOSITE SUIT AND PLEA OF LACK OF JURISDICTION

50. The plaint, when read as a whole, largely and expressly raises violation and infringement of 'literary work' which is defined under Section 2(o) of the Act, 1957 as under:-

“2(o) "**literary work**" includes computer programmes, tables and compilations including computer databases”

51. Section 14 (a) and (b) of the Act reads as under:-

“14(a) in the case of a literary, dramatic or musical work, not being a computer programme,-

- (i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
- (ii) to issue copies of the work to the public not being copies already in circulation;
- (iii) to perform the work in public, or communicate it to the public;
- (iv) to make any cinematograph film or sound recording in respect of the work;
- (v) to make any translation of the work;
- (vi) to make any adaptation of the work;
- (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,-

- (i) to do any of the acts specified in clause (a);
- (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programmer:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.”

52. 'Infringement of copyright' is provided under Section 51 of the Act, which reads as under:-

“**51. When copyright infringed.**- Copyright in a work shall be deemed to be infringed-

(a) when any person, without a licence granted by the owner of the Copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act-

- (i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) permits for profit, any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person-

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports [***] into India,

any infringing copies of the work:

[Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.]

Explanation.- For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

53. Since jurisdictional issue has been raised while addressing the Court on the nature of suit being a composite one, it is apt to refer Section 62 of the Act, 1957 that reads as under:-

“62. Jurisdiction of court over matters arising under this Chapter. - (1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2). For the purpose of sub-section (1), a "district court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.”

54. Much emphasis has been laid by the defendants on the judgment of Hon’ble Supreme Court in **Paragaon Rubber Industries vs. Pragathi Rubber Mills and others: (2014) 14 SCC 762** so as to contend that composite suit was not maintainable. The

relevant paragraphs of the judgment, therefore, need reproduction as under:-

"15. The aforesaid averments make it abundantly clear that even the plaintiff was aware that the court at Kottayam will have no jurisdiction under the 1958 Act, but tried to camouflage the same by confusing it and mixing it up or intermingling it with the relief contained under the 1957 Act. **From the averments made in the plaint, it is apparent that the plaintiff had filed a composite suit. Such a suit would not be maintainable unless the court has jurisdiction to entertain the suit in relation to the entire cause of action and the entire relief.**

16. We have noticed earlier that the issue is no longer *res integra*. The same issue has been examined in **Dhodha House** (supra). In paragraph 43, this Court formulated the question for consideration which is as under:

"43. The short question which arises for consideration is as to whether causes of action in terms of both the 1957 Act and the 1958 Act although may be different, would a suit be maintainable in a court only because it has the jurisdiction to entertain the same in terms of Section 62(2) of the 1957 Act?"

17. It was answered as follows:

"44. A cause of action in a given case both under the 1957 Act as also under the 1958 Act may be overlapping to some extent. The territorial jurisdiction conferred upon the court in terms of the provisions of the Code of Civil Procedure indisputably shall apply to a suit or proceeding under the 1957 Act as also the 1958 Act. Sub-section (2) of Section 62 of the 1957 Act provides for an additional forum. Such additional forum was provided so as to enable the author to file a suit who may not otherwise be in a position to file a suit at different places where his copyright was violated. Parliament while enacting the Trade and Merchandise Marks Act in the year 1958 was aware of the provisions of the 1957 Act. It still did not choose to make a similar provision therein. Such an omission may be held to be a conscious action on the part of Parliament. The intention of Parliament in not providing for an additional forum in relation to the violation of the 1958 Act is, therefore, clear and explicit. Parliament while enacting the Trade Marks Act, 1999 provided for such an additional forum by enacting sub-section (2) of Section 134 of the Trade Marks Act. The court shall not, it is well settled, readily presume the existence of jurisdiction of a court which was not conferred by the statute.

For the purpose of attracting the jurisdiction of a court in

terms of sub-section (2) of Section 62 of the 1957 Act, the conditions precedent specified therein must be fulfilled, the requisites wherefore are that the plaintiff must actually and voluntarily reside to carry on business or personally work for gain.

For the purpose of invoking the jurisdiction of a court only because two causes of action joined in terms of the provisions of the Code of Civil Procedure, the same would not mean that thereby the jurisdiction can be conferred upon a court which had jurisdiction to try only the suit in respect of one cause of action and not the other. Recourse to the additional forum, however, in a given case, may be taken if both the causes of action arise within the jurisdiction of the court which otherwise had the necessary jurisdiction to decide all the issues."

18. This legal position has been reiterated in the case of **Dabur India Ltd.** (supra) as under:-

"34. What then would be meant by a composite suit? A composite suit would not entitle a court to entertain a suit in respect whereof it has no jurisdiction, territorial or otherwise. Order 2 Rule 3 of the Code specifically states so and thus, there is no reason as to why the same should be ignored. A composite suit within the provisions of the 1957 Act as considered in **Dhodha House**, therefore, would mean the suit which is founded on infringement of a copyright and wherein the incidental power of the court is required to be invoked. A plaintiff may seek a remedy which can otherwise be granted by the court. It was that aspect of the matter which had not been considered in **Dhodha House** but it never meant that two suits having different causes of action can be clubbed together as a composite suit."

19. We see no conflict in the ratio of law laid down in the aforesaid two cases. In both the cases, it has been held that for the purpose of invoking the jurisdiction of the court in a composite suit, both the causes of action must arise within the jurisdiction of the court which otherwise had the necessary jurisdiction to decide all the issues. However, the jurisdiction cannot be conferred by joining two causes of action in the same suit when the court has jurisdiction to try the suit only in respect of one cause of action and not the other. In **Dabur India Ltd.** (supra) the ratio in **Dhodha House** has been explained. In **Dhodha House**, the law was stated in the following terms:

"54. For the purpose of invoking the jurisdiction of a court only because two causes of action joined in terms of the provisions of the Code of Civil Procedure, the same would not mean that thereby the jurisdiction can be conferred upon a court which had jurisdiction to try only the suit in respect of one cause of action and not the other. Recourse to the additional forum, however, in

a given case may be taken if both the causes of action arise within the jurisdiction of the court which otherwise had the necessary jurisdiction to decide all the issues.

55. In this case we have not examined the question as to whether if a cause of action arises under the 1957 Act and the violation of the provisions of the Trade Marks Act is only incidental, a composite suit will lie or not, as such a question does not arise in this case.

20. In our opinion, the aforesaid observation is self-explanatory and need no further clarification.”

55. We notice that the judgment in case of **Dabur India Ltd.** (supra) was considered in the case of **Paragon Rubber Industries** (supra) by the Hon'ble Supreme Court in paragraph nos. 18 and 19. In case of **Dabur India Ltd.** (supra), the plaintiff had sought relief of injunction against infringement of copyright (which is a relief under Copyright Act) and against passing off (a common law relief at the relevant time). The Hon'ble Supreme Court upheld an order rejecting the plaint on the ground that since the defendant was resident of Andhra Pradesh, Delhi High Court would not have jurisdiction, as there was no documentary evidence to show that the respondent was selling goods in Delhi.

56. It further stands reflected from the judgment in case of **Dabur India Ltd.** (supra) that the suit giving rise to the said decision was filed in District Court, Kottayam, Kerala claiming relief under Copyright Act, 1957 and Trademarks Act, 1958. An application was filed by the defendant therein under Order VII Rule 11 requesting rejection of plaint for want of territorial jurisdiction. The application was rejected by the trial court observing that the issue of jurisdiction would be decided at the final stage of the suit. The defendant filed civil revision in the High Court. The revision was allowed by the High Court directing the trial court to determine the issue of territorial jurisdiction afresh. The trial court, after remand, decided the said issue and held that it had jurisdiction to

entertain the suit in view of Section 62(2) of the Act, 1957. Being aggrieved of the decision of the trial court, the defendant approached the High Court by filing a revision which was allowed by the High Court setting aside the trial court's order and giving liberty to the plaintiff to amend the plaint so as to make it maintainable before the District Court, Kottayam, Kerala. Against the decision of the High Court, the defendant approached the Hon'ble Supreme Court with a plea that once the High Court had come to a conclusion that a composite suit under the Act, 1957 and the Act, 1958 was not maintainable, the High Court erred in permitting the plaintiff to amend the plaint rather than rejecting the same on the ground of lack of jurisdiction.

57. Before the Hon'ble Supreme Court, judgments in the case of **Dhodha House** (supra) and **Dabur India Ltd.** (supra) were cited and reference of the plaint was made, which contained a pleading that the defendant's goods were not available in Kottayam nor did the defendants carry on business and reside within the jurisdiction of the court at Kottayam yet the said court had jurisdiction to try the suit having regard to the provisions of Section 62(2) of the Act, 1957 as the plaintiff carried on business and resides within the territorial jurisdiction of the Kottayam Court. The Hon'ble Supreme Court found, with reference to the pleadings, that such a suit would be not maintainable unless the Court had jurisdiction to entertain the suit in relation to entire cause of action and the entire relief and by referring to **Dhodha House** (supra), it was observed that in that case question was framed as regards causes of action in terms of both Act, 1957 and Act, 1958 so as to maintain the suit as per Section 62(2) of the Act, 1957. Ultimately, the decision in **Dhodha House** (supra) was quoted and it was observed as under:-

“In this case we have not examined the question as to whether if a cause of action arises under the 1957 Act and the violation

of the provisions of the Trade Marks Act is only incidental, a composite suit will lie or not, as such a question does not arise in this case.”

58. The Hon’ble Supreme Court found no conflict in the decisions of **Dabur India Ltd.** (supra) and **Dhodha House** (supra) and decided the matter in the light of facts of that case wherein the causes of action under the Act, 1957 and Act, 1958 were agitated. The date of institution of suit *vis-a-vis* coming into force of the provisions of Trademarks Act, 1999 superseding the Act, 1958, similarity/dissimilarity in between the provisions of the two Acts *vis-a-vis* admission of the plaintiff contained in the territorial jurisdictional clause of the plaint was discussed and, then, it was observed that jurisdiction cannot be conferred by adding two causes of action in the same suit when the Court had jurisdiction to try the suit only in respect of one cause of action and not the other.

59. As to then what constituted the cause of action to institute the present suit particularly with respect to the territorial jurisdiction aspect, paragraph no. 44 of the plaint needs reference and the same is reproduced as under:-

"44. This Hon'ble Court has jurisdiction under Section 62 of Copyright Act, 1957 read with Section 20(c) of the Code of Civil Procedure, 1908 since the plaintiff's registered and principal place of business is at Plot #1A, Sector 16A, Noida, and the cause of action also arose in Noida, which is within the jurisdiction of this Hon'ble Court, as the Product Dossiers were prepared by the plaintiff at facility, at that time at D-12, Sector 59, located in Noida."

60. There is no dispute about the fact that the plaintiff is situated at and having its place of business in Gautam Budh Nagar. Merely because the defendants are located at Karnataka, Maharashtra, New Delhi, Gujarat, their location as such would not take away the territorial jurisdiction from the Commercial Court at Gautam Budh Nagar. The reason being that the appellant, by virtue of Section 62(2) of the Act, 1957, is not supposed to chase all

infringers of the copyright wherever they commit such infringement. It cannot be the intention of law to institute multiple suits at every such place wherever such infringement occurs. That is why, the legislature in its wisdom has protected the interest of the plaintiff to institute the suit at his place. When this aspect is read with Section 20(c) of CPC, we find that cause of action, wholly or in part, has arisen within the territory of Gautam Budh Nagar because apart from the admitted fact that the Product Dossiers were prepared by the plaintiff at facility, at that time, at D-12, Sector 59, located in Noida, it was brought on record by the plaintiff that the defendants were actively promoting their products at Gautam Budh Nagar. The defendant No. 2's participation in the 10th Edition of the International Pharmaceutical Exhibition (iPHEX) 2024 held at Greater Noida from 28.08.2024 to 30.08.2024, and distribution of brochures advertising Amlodipine, one of the three pharmaceutical products which are the subject matter of the suit and which have been manufactured on the basis of the plaintiff's Product Dossiers, coupled with the fact that its authorised representative on personal visit to the stall of defendant No. 2 during the said exhibition, obtained brochures wherein the said products were expressly advertised, reflect that the acts of infringement and commercial promotion of the products took place within the territorial jurisdiction of the Commercial Court at Gautam Budh Nagar thereby conferring jurisdiction upon it to entertain and adjudicate the present proceedings.

61. We are also of the view that words 'composite suit' have been wrongly stretched by the appellants so as to contend as if there were multiple causes of action alleged by the plaintiff. A combined reading of the provisions alongwith plaint averments would make it clear that unlike the situation which had arisen before the Hon'ble

Supreme Court in the case of **Paragaon Rubber Industries** (supra), the suit at Gautam Budh Nagar is not a composite suit or, if at all, it could be said to be a composite suit, the same was maintainable as no combination of two or more acts or reliefs claimed therein has arisen in the present case. The present suit is primarily one for infringement of copyright under Section 51 of the Copyright Act, 1957, arising from the unauthorized use and exploitation of the plaintiff's Product Dossiers by the defendants. Once it is established that the plaintiff has a statutory right in the Product Dossiers as original literary works, the cause of action for infringement squarely falls within the jurisdiction of the Commercial Court in view of Section 62 of the Act. The fact that the plaint also seeks ancillary and/or incidental reliefs in respect of breach of confidentiality and misuse of trade secrets does not take away its essential and predominant character as a copyright infringement suit. Further section 20(c) of CPC also stands attracted in favour of the plaintiff as we find that cause of action, wholly or in part, has arisen within the territory of Gautam Budh Nagar.

62. We are of the view that copyright is a bundle of exclusive rights conferred under Section 14 of the Copyright Act, 1957 and the element of confidentiality embedded in a literary work, such as the plaintiff's Product Dossiers, is merely its one facet. It is entirely within the prerogative of the copyright owner, i.e., the plaintiff herein, to determine whether or not to disclose or share such confidential information which is vested in the copyright. Accordingly, the relief concerning confidentiality is neither founded separately nor gives rise to an independent cause of action but flows directly from the plaintiff's copyright in the Product Dossiers. Once copyright infringement is the core relief, incidental or ancillary reliefs, whether based on confidentiality, trade secrets, or passing

off, do not affect maintainability of the suit as a whole.

63. In view of the above, contentions raised on behalf of the appellants regarding maintainability of a composite suit or the Commercial Court having no jurisdiction, either inherent or territorial, stand discarded.

AGREEMENT(S), THEIR SALIENT FEATURES AND PERMISSIBILITY OF ACTIVITIES THEREUNDER

64. In order to deal with other issues involved in the present case, it is necessary to mention certain relevant aspects as regards the licence agreements executed. All the agreements in relation to different products/medicines are almost identical in nature. The parties to the agreements are as under:-

“JAMP PHARMA CORPORATION, a corporation incorporated under the laws of Canada and having its office at 1380 Newton Street, Suite 203, Boucherville, Quebec J4B 5H2, herein acting and represented by Louis Pilon, its President, duly authorized to act as he so declares (“Jamp”)

AND

JUBILANT LIFE SCIENCES LIMITED, a company incorporated in India having its Registered Office at Bhartiagram, Gajraula, Jyotiba Phoolay Nagar, Uttar Pradesh, India Pin code 244223 and a Corporate Office at 1 A, Sector 16A, Institutional Area, Noida 201301, UP (“JLL”)

65. Some relevant clauses of the License Agreements are reproduced hereunder:

1.1- License:

In consideration of the license fees ("License Fees") described below, Jamp is hereby acquiring:

(a) a copy of the Product Dossiers for the Territory for each Product, and which was used or will be used by JLL in order to obtain its NOCs for the relevant Product, including all biostudies and all improvements to the molecules and changes made pursuant to any requirement of Health Canada, and

(b) a fully paid-up, perpetual, royalty-free and transferable non-exclusive license (the "License") to register, manufacture, market, distribute and sell the Products in the Territory, including, without limitation, the rights to sublicense the foregoing rights to (i) any of

Jamp's Affiliates or related parties in the Territory, or (ii) third Person retailers in the Territory for private label sales, the whole notwithstanding any termination of this Agreement (as a whole, or for any Product) for any reason. Such License shall include the full rights to use, improve, reproduce, modify and copy the Product Dossiers and the Product Information, to make an ANDS for the corresponding Products and to be issued an NOC and a DIN therefor, and to use the formula therein to manufacture or have manufactured the corresponding Products following the end of the Initial Term or any Subsequent Term or any earlier termination of this Agreement. (...)

1.2- License Fee:

- (a) The License Fee for each of the Products is set forth in Annex 1.
- (b) The portions set forth below of each Licence Fee for each Product shall be payable on the achievement of each milestone for such Product:

Milestone	Trigger	Percent License Fee
1	Date of this Agreement	30.00%
2	JLL filing ANDS	25.00%
3	Receipt of NOC for Jamp	25.00%
4	First commercial shipment to Jamp	20.00%

- (c) If JLL does not receive an NOC for a Product within twenty four (24) months of the date it filed or expects to file for its NOC therefor as set forth in Annex 1, then Jamp may elect in writing to terminate this Agreement for such Product within sixty (60) of such date, in which case ninety percent (90%) of all portions of the License Fee for such Product paid to such date shall be reimbursed by JLL to Jamp within thirty (30) days thereof.
- (d) If Health Canada rejects the application for JLL's NOC for a Product, then this Agreement will automatically terminate for such Product, in which case all portions of the License Fee for such Product shall be promptly reimbursed by JLL to Jamp within thirty (30) days thereof.
- (e) Jamp shall be responsible for its costs of filing its ANDS, and cross reference to JLL's DINs.”

66. Word **‘territory’** has been defined under Annexure-2 to the agreement, as under:-

“ ‘Territory’ means the whole of Canada.”

67. Clause 15.11 provides that the agreement and any question in connection therewith shall be governed by the laws of the Province of Quebec and the laws of Canada. The complete clause is extracted as under:-

“15.11 Governing Law and Good Faith Resolution. This Agreement and any question in connection therewith, regardless of the forum wherein any such issue may be litigated, shall be governed by the laws of the Province of Quebec and the laws of Canada applicable therein. If any dispute or question (a “Dispute”) arises between the Parties concerning this Agreement, the Parties shall in good faith attempt to resolve such Dispute promptly and in an amicable manner under the following informal dispute resolution procedure. If a Dispute arises which is not resolved by the operational personnel involved, the Chief Executive Officer of each Party or such other senior operations manager(s) of each Party as is designated by such Party from time to time to serve in such capacity (the "Dispute Resolution Committee") shall be notified by written communication. The Dispute Resolution Committee, made up of equal representation, shall meet at a mutually agreed upon date (such date to be within ten (10) Business Days of being notified of a Dispute) (the "Meeting Date") and shall conduct negotiations in good faith in an effort to resolve the Dispute either by telephone or in person. In the event the Dispute Resolution Committee is unable to resolve a Dispute within ten (10) Business Days of the Meeting Date, then, the determination of such Dispute shall be resolved by arbitration in accordance with the provisions of Section 15.12.”

68. The clause of ‘survivability of the agreement’ is contained in Clause 14.3, which reads as under:-

“14.3-Survivability: Notwithstanding the expiry or earlier termination of this Agreement, the terms and conditions contained in Section 3.5 entitled "Patent Challenges", Section 3.6 entitled, "Third Party Product Liability Claims", Section 15.5 entitled "Amendment/ Waiver/ Remedies", Section 15.7 entitled "Assignment", Article 2 entitled "Term and Termination", Article 5 entitled "Active Pharmaceutical Ingredient", Article 8 entitled "Complaints, Adverse Events and Product Recall, Article 10 entitled "Indemnities", Article 13 entitled "Confidentiality" and Article 14 entitled "Events of Default" shall survive the termination or expiration of this Agreement.”

69. Here only, we also deem it appropriate to refer the main defence of the defendants as contained in paragraph no. 37(iii) of their objections against the injunction application. The same reads as under:-

“It is reiterated, Jamp Pharma had acquired the perpetual right to “**manufacture**”, “**market**” and “**sell**” the said Products, after expiration or termination of the License Agreements, for each Product (as set out in Annexure – A of the each of the

License Agreements), which have already expired due to efflux of time, or have been otherwise terminated. Jamp Pharma has acquired a perpetual license over the Product Dossiers under the said License Agreements, and is fully entitled to tech transfer the Product Dossiers to any manufacturer including the defendants, for the purpose of manufacturing the Products for the Canadian market. Therefore, Jamp Pharma's use of the Product Dossiers (and the use by the defendants) was precisely what was contemplated under the License Agreements and can in no manner amount to infringement."

70. It is, therefore, reflected that the defendants, apart from taking other pleas, also wanted to contend that since activity was being done by Jamp Pharma under some licence agreements and since the said agreements had expired by efflux of time, Jamp Pharma was free to 'manufacture', 'market' and 'sell' the products. A contrary plea in the same paragraph was taken that Jamp Pharma had acquired a perpetual licence over the Product Dossiers under the licence agreements and is, therefore, fully entitled to tech transfer the Product Dossiers to any manufacturer for the purposes of manufacturing the products 'for' the Canadian market. The aforesaid pleas raised based upon alleged rights flowing from licence agreements are mutually destructive and inconsistent and even accepting either or both of the two contentions, the Court is not inclined to read anyone of the same in favour of the appellants, inasmuch as no clause is found in the agreements which could authorize Jamp Pharma to transfer either the licence or the technology for the purposes of manufacturing, marketing and selling the products '**outside the territory of Canada**'. Whether the licence agreements expired or were perpetual in nature, in neither of the two situations, the defendants can justify their acts based upon arrangements made inter se Jamp Pharma and the defendants, clause of 'survivability of the agreement' also being there.

71. It is well settled that an agreement has to be read as a whole and not in piecemeal so as to understand its nature and

implications as well as permissibility of acts to be done under the same. Once the language used in the licence agreements is clear and unambiguous, the Court cannot read its terms as suggested by the defendants but has to read the same as they provide for. The entire agreements read as a whole or even the distinct clauses thereof do not contain any stipulation whereunder the intention of the parties to the agreement was to promote production, marketing or sale of the products outside the territory of Canada, whether the licence remains in force or expires. Rather the clauses are otherwise and contain stipulations that prohibit violation of rights conferred under the agreements even after their expiry. The Court finds that wherever the defendants have tried to assume or vest rights qua the products in themselves, they have intentionally omitted the significance of word **‘territory’** which, in explicit terms, is defined as the **‘whole of Canada’**. The Agreements specifically restrict the activities in the Canadian territory and not outside that. Under clause 1.4 of the Agreement, except to the extent granted, all rights to the intellectual property are retained by the plaintiff. The fact that the appellants rely on the authority from Jamp Canada for the activity undertaken by them, the clause pertaining to the territory has to be examined. In case the appellants were not to rely on the authority from Jamp Canada, in absence of denial of use of the subject Product Dossiers, the plaintiff is entitled to maintain the suit against them.

72. We, therefore, hold that irrespective of the appellants not being party to the agreements, their impugned acts were contrary to the terms of the agreements entered into between Jamp Canada and plaintiff and, hence, they were not entitled to take shield of either not being party to the agreements or otherwise arising out of expiry of agreements by efflux of time and its effect. Their action falls within the meaning of 'copyright infringement'.

**WHETHER ARBITRATION PROCEEDINGS IN CANADA
RENDER THE SUIT PROCEEDINGS AS NOT
MAINTAINABLE**

73. A plea was raised on behalf of the defendants that arbitration proceedings being pending in Canada, the suit in India was not maintainable. The argument that the appellants had never contended or intended for making a reference of the dispute to the Arbitral Tribunal, is found not acceptable, inasmuch as their very case contained in paragraph no. 13 of the objections filed against the injunction application and also in paragraph nos. 6 and 7 of the application seeking vacation of ex-parte ad-interim injunction, filed under Order XXXIX Rule 4 of CPC, is that they not only emphatically asserted that the dispute raised by means of the suit was covered by arbitral clause contained in the agreements but also raised a plea that it ought to be referred for arbitration. Further, in paragraph no. 7 of the application under Order XXXIX Rule 4 of CPC it was stated in explicit terms that ‘the defendant reserves its right to make an appropriate application for referring the issues raised in the present commercial suit to arbitration, under the said licence agreements’.

74. The sheet anchor of the submission made by the appellants as regards non-maintainability of suit on account of pendency of arbitration proceedings is mainly based on the judgment of Hon’ble Supreme Court in the case of **Bharat Aluminum Company** (supra), however, the said judgment is of no help to them as the matter before the Hon’ble Supreme Court had arisen from a case where an agreement dated 22.04.1993 had been executed between the appellant and respondent therein, under which, the respondent was to supply and install a computer base system. The agreement contained an arbitration clause providing applicability of English Arbitration

Law and prescribing place of arbitration in London (England). The fact situation in the present case is different inasmuch as, admittedly, no arbitration proceedings are pending between the plaintiff and the defendants in Canada nor could there be, as the defendants are not party to the agreements.

75. Further, a bare perusal of the record of arbitration proceedings would reveal that the dispute raised in the suit giving rise to these appeals was not covered by the issues being considered by the Arbitral Tribunal in Canada. Original issues in dispute referred to arbitration are as follows:

- (i) Are the Respondents in default of any obligations pursuant to the agreements?
- (ii) Are the obligations of JGL extinct as a result of events of Force Majeure?
- (in) Is JAMP limited in terms of claimable damages by any contractual limitations of liability clauses or other legal principles?
- (iv) When were the agreements stood terminated?
- (v) Is JAMP liable for any amounts owed or damages pursuant to the agreements?

76. The prayers made before the Arbitral Tribunal are also reproduced as under:-

“608. For the reasons set out herein, JGL respectfully requests the Tribunal to:

DISMISS the claims of JAMP in the Statement of Claim in their entirety;

DECLARE that HC Order 1, HC Order 2 and the COVID-19 Pandemic are events of Force Majeure as defined in the Agreements;

DECLARE JAMP limited in terms of claimable damages by the limitation of liability clauses under the Agreements, should the Tribunal declare JGL liable for any potential damages;

DECLARE that any Agreements not otherwise expired were unilaterally terminated by JAMP at the earlier date of JAMP entering into agreements with third parties or as of August 7,

2021;

DECLARE that JAMP is liable to pay JGL for each additional cross-licenses issued to Angita;

DECLARE that JAMP is liable for interest in connection with its late payment of invoices;

DECLARE that JAMP is liable for the value of the products listed in the Amended Table 1 and for any damages because of JAMP's failure to take delivery of said products;

DECLARE JAMP in breach of the Cinacalcet Agreement and liable for damages for non-compliance of its contractual obligations;

ORDER that JAMP pays all arbitration costs incurred to date.”

77. Further, even the preliminary issue of use of the Product Dossiers does not form part of the arbitration proceedings which fact stands reflected from paragraph no. 45 covered by 8th heading of Jamp Pharma’s response in the matter. The same is reproduced as under:-

“8. THE SO-CALLED "PRELIMINARY ISSUE" OF THE USE OF THE PRODUCT DOSSIERS

45. Jubilant's new purported claim with respect to the use of the Product Dossier is presented most belatedly. It does not form part of these Arbitration proceedings and the Tribunal is not seized of it, as admitted by Jubilant. Any relief sought by Jubilant, including so-called "reserves of rights", should be discarded and left unaddressed.”

78. We also find force in the submissions made on behalf of the plaintiff based upon ratio in the case of **Booz Allen & Hamilton Inc.** (supra) and **Vidya Drolia** (supra) that the disputes relating to rights *in rem* are non-arbitrable, as such rights require adjudication by public for exercising sovereign judicial powers. Ratio of decisions cited that disputes relating to copyright infringement are non-arbitrable since copyright is a statutory right *in rem* and any adjudication thereon would necessarily operate against the world at large and that arbitral tribunals lack jurisdiction to decide questions

of statutory subsistence, ownership, or infringement of copyright, as these are within the exclusive domain of civil courts, is fully applicable in the facts of the present case.

79. In view of the above discussion, we discard in toto, the submissions made by the appellants that pendency of the arbitration proceedings in Canada would render institution of commercial suit as not maintainable or that the claim for injunction could not be considered by the Commercial Court.

WHETHER E-MAILS OF 2021 WOULD DEFEAT THE CLAIM FOR INJUNCTION ON THE TOUCHSTONE OF SECTION 12-A OF CC ACT, 2015

80. As far as the compliance of Section 12-A of C.C. Act, 2015, that is to say the dispensation of requirement of pre-institution mediation, the record reflects that the suit in question was filed on 23.08.2024 before the Commercial Court. Along with the suit, an application seeking exemption from pre-institution mediation was also moved by the plaintiff. The Commercial Court, having considered the nature of relief claimed in the suit and the injunction application, granted exemption from pre-institution mediation and by allowing the application under Section 12-A of the Act, it directed registration of the suit as an original suit. This order was passed on 23.08.2024 and the same day, the Commercial Court granted ex-parte ad-interim injunction. The order dated 23.08.2024 has remained unchallenged through any separate proceedings, though submissions have been made in these appeals that requirement of pre-institution mediation under Section 12-A of the Act was wrongly dispensed with.

81. We may observe here that whenever a suit is instituted before a Commercial Court and it contemplates an urgent interim

relief, i.e., in the facts of the case, the plaintiff requests the Court for grant of an urgent interim relief and presses before the circumstances under which such grant is necessary, the Commercial Court is required to apply its mind as to whether such grant is necessary and whether the requirement of pre-institution mediation under Section 12-A of the Act should be dispensed with. Once the Commercial Court, after due consideration of the frame and nature of the suit and claim for urgent interim relief, dispenses with requirement of pre-institution mediation and registers the case, the jurisdiction so exercised cannot normally be interfered with on a challenge made at a later stage when the suit or the injunction application is contested by the defendants. Even in a case where the suit is registered after dispensing with requirement of pre-institution mediation and no ad-interim injunction is granted but simply notices are issued to the defendants on the application seeking interim injunction, the registration of the suit and dispensation of requirement of pre-institution mediation cannot be normally interfered with later on. In a given case, if, at the instance of the defendants, the order granting *ex-parte* interim injunction is sought to be vacated, the legislative scheme of the C.C. Act, 2015 read with the provisions of CPC, does not provide for a mechanism to undo the dispensation of requirement under Section 12-A. There may be a case where, on facts being brought to the notice of the Commercial Court by the defendants, a belated claim for injunction may be taken as a justifiable reason to vacate the ad-interim injunction but, in absence of any provision, either in C.C. Act, 2015 or in CPC, providing recall/setting aside of the initial order dispensing with requirement of pre-institution mediation, it is not open for the Commercial Court to recall/set aside the said order. Such exercise, if done, will push back the matter to its initial stage leading the litigants to nowhere. Legislative intent and the procedure of law has to be understood and applied in a pragmatic

manner and not in a way which frustrates the very purpose of law.

82. The Hon'ble Supreme Court, in the case of **Yamini Manohar** (supra) has, while discussing Section 80(2) C.P.C., observed that unlike Section 80(2), even an application is not a pre-condition under Section 12-A of the Act and when a prayer is made for an urgent interim relief, the Commercial Court should examine the nature and subject matter of the suit, the cause of action and the prayer for interim relief and the facts and circumstances have to be considered holistically from the standpoint of the plaintiff. A check on the prayer for interim relief to be exercised by the Commercial Court has also been emphasized. Earlier also similar view was taken by the Hon'ble Supreme Court in the case of **Patil Automation Private Limited** (supra).

83. Recently, the Hon'ble Supreme Court, in the case of **Dhanbad Fuels Private Limited** (supra) has approved the ratio laid down in the case of **Yamini Manohar** (supra) and **Patil Automation Private Limited** (supra), with a clarification regarding the date from which declaration of the mandatory nature of Section 12-A would relate back and it has been held that such a declaration would apply prospectively to the suits instituted on or after 20.08.2022. As regards leave of the Court, it has been held that unlike Section 80(2) of the C.P.C., leave of the Court is not required to be obtained before filing a suit without complying with Section 12-A and as far as test for "urgent interim relief", it has been held that if on examination of the nature and the subject matter of the suit and the cause of action, the prayer in that regard should be seen from the stand point of the plaintiff and the Court must also be vary of the fact that urgent interim relief must not be merely an unfounded excuse by the plaintiff by-passing mandatory requirement of Section 12-A.

84. In view of the above, although there is no necessity of moving an application under Section 12-A, as the application was moved by the plaintiff and the Commercial Court, after considering the nature of the dispute and the prayer to grant interim injunction, accorded exemption from pre-institution mediation and also allowed the application, it has not fallen into any error of law in so far as the procedure adopted by it is concerned. After all, it was a suit for infringement of intellectual property rights in which an urgent interim relief was prayed for and the Court should focus on the legislative intent and distinction between words 'entitlement' to urgent interim relief and 'contemplation' of urgent interim relief.

85. As far as emails dated 22.06.2021 are concerned, the same reflect that they were sent by Gerald Soucy to one Pramod Nair, who is admittedly defendant no.4's employee and its copy was sent to one Hemant Kumar who is admittedly plaintiff's employee. The contents of emails read as under:-

"From: Gerald Soucy <gsoucy@jamppharma.com>
Sent: Tuesday, June 22, 2021 8:53 PM
To: Pramod Nair
Cc: Hemant Kumar
Subject: TR: QA release dates for seeking MOTs
Hi Pramod,

I see below that next air shipment by air will be citalopram 20mg 100. Hemant is probably aware that Jubilant want to send to us placebos that we need for testing. Jubilant QA said to our QA team that it is better to send with regular product. Using the citalopram 20mg 100ct shipment to combine should be a good option. Could you verify with Hemant if it is the case and if not what is their plan."

"From: Gerald Soucy
Sent: June 22, 2021 11:07 AM
To: Pramod Nair <pnair@jamppharma.com>
Cc: Leonardo Lavans <llavans@jamppharma.com>
Subject: RE: QA release dates for seeking MOTs

Good point. But Medreich’s lots (first one) will have to be analysed and with the method transfer to be done it will take up to 2 months instead of 3 weeks with Jubilant to release the goods. It is kind of tricky situation.

I would suggest to bring 2 lots by air (citalopram 10mg 100ct) just to be safe.”

“From: Gerald Soucy
Sent: June 22, 2021 8:19 AM
To: Pramod Nair <pnair@jamppharma.com>
Cc: LeonardoLavans<llavans@jamppharma.com>
Subject: RE: QA release dates for seeking MOTs

Hi Pramod,
Are you sure no need by air for the 10mg ?

De: Pramod Nair
Envoye: June 22, 2021 6:29 AM
A: <‘Hemant Kumar’ H.Kumar@jubl.com
Cc: Vikrant Bendre <Vikrant.Bendre@jubl.com>;
Gerald Soucy <gsoucy@jamppharma.com>;
JUAN AVILES <javiles@jamppharma.com>;
Alpesh Panchal <abpanchal@jamppharma.com>;
Leonardo Lavans <llavans@jamppharma.com>

Object: RE: QA release dates for seeking MOTs
Hi Hemant,

Pl find below the MOT’s.

Descr iption	Pack size	Custo mer	Batch No.	Quan tity in Tab	Recei pt date	TAR GET QA Relea se Date	Statu s	FG Recei pit Agin g	QA Relea se Agin g	No. of Pallet	MOT AIR/ SEA S
Cital. 10mg . Bottl e 100(RS), Jamp	100	Jamp	CI12 1003 A	3024 00	6/16/ 2021		UND ERT EST	5	NA	1	SEA
Cital. 10mg . Bottl e 100(RS),	100	Jamp	CI12 1002 A	3120 00	6/16/ 2021	28- June- 2021	UND ERT EST	5	NA	1	SEA

Jamp										
Cital. 10mg . Bottl e 100(RS), Jamp	100	Jamp	CI12 1005 A	3024 00	6/17/ 2021	UND ERT EST	4	NA	1	SEA
Cital. 10mg . Bottl e 100(RS), Jamp	100	Jamp	CI12 1004 A	3072 00	6/17/ 2021	UND ERT EST	4	NA	1	SEA
Cital. 20mg . Bottl e 500(RS), Jamp	500	Jamp	CI22 1013 A	1306 500	6/15/ 2021	UND ERT EST	6	NA	2	SEA
Cital opra m USP 20mg	30	Jamp	CI22 1011 B	3117 60	6/16/ 2021	UND ERT EST	5	NA	2	SEA
Amlo dipin e Besyl ate 10mg Tab5 00 Jam- CAN	500	Jamp	AQ2 2101 7A	4645 00	6/16/ 2021	UND ERT EST	5	NA	2	SEA
Amlo dipin e Besyl ate 10mg Tab5 00 Jam- CAN	500	Jamp	AQ2 2101 6A	4680 00	6/16/ 2021	UND ERT EST	5	NA	2	SEA
Amlo dipin e	500	Jamp	AQ2 2101 5A	4620 00	6/15/ 2021	UND ERT EST	6	NA	2	SEA

Besyl ate 10mg Tab5 00 Jam- CAN											
---------------------------------------------------	--	--	--	--	--	--	--	--	--	--	--

86. What we find is that mere sending of the e-mails by Gerald Soucy to defendant no.4’s employee and marking copy of one or the other e-mail to the plaintiff’s employee, in itself, cannot be treated as fatal to the plaintiff’s case for infringement of copyright in the Product Dossier. The emails of 2021 were exchanged between the representatives of the Appellants and deal with or refer to consignments relating to the citalopram products. They, in themselves, nowhere mention or disclose any use of the intellectual property rights vested in the plaintiff’s Product Dossiers. The cause of action to institute arose only upon the admission made by Jamp Canada’s witness, Mr. Sukhad Juneja in arbitration proceedings on 02.04.2024 that the technology transfer had been implemented in favour of the defendant No. 4 and further transferred to defendant Nos. 1 to 3. Case of the plaintiff is that on such stand taken by Mr. Sukhad Juneja in affidavit, various discoveries was made and revealing of e-mails is also one of such discoveries. It is well settled that cause of action to institute a suit is always a bundle of facts and the Court is competent to understand the entire nature of dispute and chronology of the events giving rise to institution of suit. One or the other document having no direct link or having a weak link with the dispute raised, cannot form the basis of non-suiting a plaintiff and, therefore, once we are satisfied that bulky documentary evidence, at this stage, establishes vested rights of the plaintiff in the Product Dossiers with no defence with the defendants to justify their acts of manufacturing and selling the products using the Product Dossiers of the plaintiff in India, we discard the email communications as an

alleged ground to non-suit the plaintiff.

87. Further, on the point of delay in bringing action in such matters, the Hon'ble Supreme Court in the case of **Midas Hygiene Industries (P) Ltd.** (supra) has held that 'in cases of infringement either of trade mark or of copyright, normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases.' The grant of injunction also becomes necessary if it *prima facie* appears that the adoption of the mark was itself dishonest.

88. In **Mex Switchgears Pvs. Ltd. vs. Max Switchgears Pvt. Ltd. : (2014) 3 AIR Del R 232**, a learned Single Judge of Delhi High Court, after placing reliance on **Midas Hygiene Industries (P) Ltd.** (supra) observed that in case of infringement, either of Trademark or of Copyright, normally an injunction must follow and mere delay in bringing action is not sufficient to defeat grant of injunction.

89. In **Hindustan Pencils Private Limited vs. M/s India Stationary Products Co. & another : AIR 1990 Del 19**, a learned Single Judge of Delhi High Court has held that acquiescence may mean an encouragement by the plaintiff to the defendant to use the infringement mark. It is as if the plaintiff wants the defendant to be under the belief that the plaintiff does not regard the action of the defendant as being violative of the plaintiff's rights. Furthermore, there should be a tacit or an express assent by the plaintiff to the defendant's using the mark and in a way encouraging the defendant to continue with the business. It will be for the defendant to prove acquiescence by the plaintiff and acquiescence cannot be inferred merely by reason of the fact that the plaintiff has not taken any action against the infringement of its rights.

90. In **Makemytrip (India) Private Limited vs. Orbit Corporate Leisure Travels (I) Private Limited : (2018) 73 PTC 198**, a learned Single Judge of Delhi High Court found that plea of acquiescence premised merely on the basis of email communications would not amount to acquiescence. In **Hindustan Pencils Private Limited** (supra), it has been held that in order to claim the defence of acquiescence, there should be a tacit or an express assent by the plaintiff to the defendant's using the mark and in a way encouraging the defendants to continue with the business. It is as if the plaintiff wants the defendant to be under the belief that the plaintiff does not regard the action of the defendant as being violative of the plaintiff's rights.

SCOPE OF INTERFERENCE IN APPEALS ARISING OUT OF INTERIM INJUNCTION MATTERS

91. In **Laxmikant V. Patel** (supra), the Hon'ble Supreme Court, while discussing interference at the early stage in the matters arising out of grant of injunction, observed as under:-

“17. We are conscious of the law that this Court would not ordinarily interfere with the exercise of discretion in the matter of grant of temporary injunction by the High Court and the trial court and substitute its own discretion therefor except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the order of the a courts under scrutiny ignores the settled principles of law regulating grant or refusal of interlocutory injunction. An appeal against exercise of discretion is said to be an appeal on principle. The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion (see *Wander Ltd. v. Antox India (P) Ltd.* and *N.R. Dongre v. Whirlpool Corpn.*)....

(emphasis supplied)

92. In **Neon Laboratories Limited vs. Medical Technologies Limited and others : 2016 (2) SCC 672**, the Hon'ble Supreme Court analysed the scope of interference in the appeals arising out of injunction orders passed in cases relating to intellectual property rights and it was observed as under:-

“5. it is now well-entrenched in our jurisprudence that the appellate court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. We shall restrict ourselves to reference in *Wander Ltd. v. Antox India (P) Ltd.* :1990 Supp SCC 727, wherein it has been adumbrated that the appellate court ought not to "reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal b solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion". (SCC p. 733, para 14)

We shall be careful not to transgress these frontiers.”

(emphasis supplied)

93. In **Wander Ltd. Vs. Antox India Pvt. Ltd.** (1990) Supp. SCC 727, **Laxmikant V. Patel** (supra) and in **Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi and others** (2024) 1 SCR 1343 para 27, the Hon'ble Supreme Court has observed that **"the emphasis is now more on perversity rather than a mere error of facts or law in the order granting injunction pending the final adjudication of the suit."**

(emphasis supplied)

94. We, therefore, summarise our conclusions as under:-

- (i) The Commercial Court has not erred in dispensing with the requirement of pre-institution

mediation under Section 12-A of the Act, 2015.

(ii) The relief of injunction being discretionary and conduct of parties being of significance, the plaintiff has successfully established its *prima facie* case resting upon its ownership of original Product Dossiers for the pharmaceutical drugs/products, viz Losartan, Amlodipine and Citalopram.

(iii) Dossiers constitute and are protectable as original 'literary works' under the Copyright Act, 1957. These Dossiers were shared by the plaintiff with Jamp Canada under strict confidentiality and territorial limitations but in violation of such restrictions, Jamp Canada transferred the Dossiers to its Indian subsidiary, the defendant No. 4, which, in turn, wrongfully facilitated their use by defendant Nos. 1 to 3 for manufacturing and use in India.

(iv) The defendant-appellants have failed to justify their acts of 'manufacturing', 'marketing' and 'selling' the products by using Product Dossiers of the plaintiff in India and their attempt to interpret the terms of agreements as well as consequences arising therefrom, establishes their dishonest intention to infringe copyrights in 'literary work' in the form of Product Dossiers of the plaintiff.

(v) Based upon the discussion made in this judgment, the remaining two ingredients, i.e., balance of convenience and irreparable loss also stand established in favour of the plaintiff.

(vi) Arbitration proceedings pending between the

parties to the agreement(s), in Canada are not an impediment either in institution of the suit or consideration of injunction application.

(vii) The Commercial Court at Gautam Budh Nagar has territorial and inherent jurisdiction to entertain the suit.

95. In view of the above, the findings recorded by the Commercial Court are not found to be perverse and, therefore, we find no good reason to interfere with the order of the Commercial Court. Consequently, both the appeals are **dismissed**.

(Kshitij Shailendra, J) (Arun Bhansali, CJ)

October 15, 2025

AKShukla/Sazia/Jyotsana