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

+ **FAO(OS) (COMM) 310/2022 & CM APPLs.51563-51565/2022**

SUN PHARMACEUTICAL INDUSTRIES LTD Appellant

Through: Mr. Sachin Gupta, Ms. Jasleen Kaur,
Ms. Swati Meena and Ms. Yashi
Agrawal, Advocates

versus

DWD PHARMACEUTICALS LTD. Respondent

Through: Mr. Karan Bajaj and Mr. Rupin Bahl,
Advocates

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

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30.11.2022

Present appeal has been filed challenging the order dated 22nd November, 2022 to the extent that it imposes a cost of Rs.10 lakhs on the appellant on the ground of concealment. Appellant also seeks liberty to file a cancellation petition against the Respondent-Defendant's mark ZEST registered under no. 4066398.

Learned counsel for the appellant states that the Respondent-Defendant had alleged that the Appellant was guilty of concealment in as much as it did not disclose that the Respondent held registration of ZEST family of marks and Respondent had opposed Appellant's other applications for the trade mark EXEZEST and TRIOLMEZEST in 2009 and 2014, which are pending and FERIZEST was cited as a conflicting mark *qua* the

Appellant's trademark FORZEST.

Learned counsel for the appellant states that the Appellant, in para 21 of the plaint, had averred that the Respondent-Defendant claims to be the registered proprietor of various ZEST trademarks and had also placed on record the Respondent-Defendant's reply to examination report dated 23rd October, 2020 alongwith the plaint, wherein the list of such ZEST trademarks was provided.

Issue notice.

Mr. Karan Bajaj, Advocate accepts notice on behalf of the Respondent-Defendant. He prays for and is permitted to file a reply affidavit within six weeks. Rejoinder affidavit, if any, be filed before the next date of hearing.

List on 27th March, 2023.

Till the next date of hearing, the direction directing the appellant to deposit a cost of Rs.10 lakhs shall remain stayed.

MANMOHAN, J

SAURABH BANERJEE, J

NOVEMBER 30, 2022
AS