IN THE HIGH COURT OF DELHI

DATED: 27.11.2000

CORAM

THE HONOURABLE MR. JUSTICE MUKUL MUDGAL

Schneider Electric Industries S.A. ... Plaintiff

Vs.

Telemecanique & Controls (India) Ltd. ... Defendant

JUDGMENT

Mukul Mudgal, J.

1. This application under Section 151 CPC was filed after the orders on the interim injunction IA. No. 8522/99 under Order XXXIX Rules 1 & 2 GPC, filed by the plaintiff had been reserved.

2. The principal plea in the aforesaid application is that certain documents have been suppressed from the Court. There has been fraudulent suppression and fabrication of document^ and the plaintiff has altered the records of the Controller of Patents and has not only misled this Court but the Controller of Patents. It is further stated that patents are not worked by the plaintiff. Accordingly it is prayed by the defendant in the said application to bring on record the additional facts and documents annexed as Annexures A & B and the grant the prayer in the affidavit of R.N. Khanna dated 4th July, 2000 in support of this application.

3. The prayer made in this application is as follows:-

> "It is therefore, submitted that this Hon'ble Court be pleased to take on record the affidavit of Mr. R.N. Khanna dated 4th July, 2000 and permit the defendant to refer and rely on the same."

4. The prayer made in the said supporting affidavit of Mr. R.N. Khanna dated 4th of July, 2000 is as follows:-

> "a. allow me to place the additional facts and the documents annexed herewith as Annexures A and B on record, and b. summon the records of the Office of the Controller of Patents Delhi and Calcutta relating to patent numbers 170967, 172195, 171351, 172722, 174569, 174606, 177052, 172629, 172728 and 177245. c. Allow my Company?s application under Order 7 Rule 11 of CPC being IA No. 1685 of 2000."

5. In so far as the main plea of suppression of material documents by the plaintiff from this Court is concerned, the defendant has relied upon the Agreement to Con firm dated 30.9.1997 said to be between Schneider Electric SA (and the plaintiff Schneider Electric Industries SA, the holding company) and the Deed of Assignment dated 23.8.1999, to submit that the documents have been misused by the plaintiff and are in fact fabricated and sham. The principal document under dispute is the Agree ment to Confirm dated 30.9.1997, which according to the defendant was neither filed nor mentioned by the plaintiff in the plaint. The plaintiff submits that this very docu- ment was not filed as the Contract of Contribution was already filed and it was not thought fit to file the Agreement to Confirm as it was general in nature and supplemental and ancillary to the contract of contribution. Furthermore the registered patents and designs transferred to the plaintiff company by the contract of contribution were 42 in number and the present suit is filed only for 22 items.

6. Furthermore in so far as the main suit is concerned it is the application (IA. 8522/99) under Order XXXIX Rules 1-2 CPC which was heard by this Court. Even though the defendant has filed a comprehensive reply to the aforesaid application for interim injunction, the defendant itself has yet to file the written statement in the case. It has merely filed its reply to the aforesaid interim application.

7. In this view of the matter, the plaintiff has yet to file its replication and even if some grievance was raised in the written statement, while completing the

pleadings the documents complained of could have been brought on record in the replication and I am of the view that at this stage it is not necessary for me to consider these pleas raised in the defendant's application. These pleas can only be considered after evidence has been led at the time of final hearing of the suit.

8. In so far as the plea of the applicant/defendant regarding fabrication of documents made in the application is concerned, the plaintiff's case is that merely because the documents are not filed by the plaintiff alongwith the plaint it cannot inevitably lead to a conclusion that the same are fabricated. The plaintiff submits that there is no need for the plaintiff to fabricate any documents as all these documents are executed with its own group companies and sister companies of which the plaintiff is a member and no one with the requisite locus in law has objected to or challenged the documents or the sequence of events contained therein, it is submitted that the defendant in any event has no locus to raise this plea, the plaintiff's plea is justified. It does not lie in the defendant's mouth at this stage to urge the plea about fraudulent suppression of sham documents as the fact that the documents were not filed alongwith the plaint cannot necessarily lead straightway to the conclusion that the documents were fabricated and sham. This can only be decided after evidence is led. The case of the plaintiff is not altered in a significant manner by filing the agreement to confirm or by relying upon the deed of assignment.

9. In so far as the plea of the defendant that 5 patents of the plaintiff are not being worked is concerned, reliance has been placed on the Gazette Notification dated 23rd October, of 1999 of the Controller of Patents. The defendant has, therefore, submitted that since the plaintiff was not commercially exploiting its patents in India it is not entitled to an injunction at least qua these patents. Reliance has been placed on a judgment of Division Bench of this Court in Franz Xaver Huemer v. New Yash Engineers, 1996 PTC (16)(DB) 232. The plaintiff has sought to counter this plea of the defendant by stating that the Gazette Notification is based on the submission of the patentee in 1996 that the patents were not being worked. However, it is submitted that in the years 1998

&, 1999 the statement of working of the patents has been filed and has not been taken into account by the Controller of Patents while notifying the patents of the plaintiff by the aforesaid Notification. The judgment of the Division Bench of this Court in Franz Xaver Huemer v. New Yash Engineers, 1996 PTC (16)(DB) 232 is sought to be distinguished by submitting that in the aforesaid case patentee was not commercially exploiting the patents in India and consequently the public was being denied the benefit of such patents by its lack of user and this prevented a similar device from being worked or used by the market or industry. The plaintiff submits that the plaintiff's products are being sold commercially and the public is not being deprived of the benefits of the patents and the aforesaid judgment cannot, therefore, be relied upon.

10. After considering the rival pleas of the parties on this issue. I am of the view that at this stage I am not satisfied that the 5 patents are not being worked by the plaintiff.

The defendant has produced the statement of working for the year 1998 & 1999 which were filed with the Controller of Patents and has also been commercially exploiting the goods patented in the market. Consequently I am unable to agree with the defendant's plea at this juncture.

11. In this view of the matter, prayer (a) in the affidavit supporting this IA. is allowed and the defendant is permitted to place the additional facts and documents on record. In so far as prayer (b) for summoning the records from the Office of the Controller of Patents, Delhi and Calcutta is concerned, the same is declined but it is open to the defendant to file certified copies of any documents which it wishes to rely upon. In so far as prayer (c) for allowing defendant's application under Order VII Rule 11 CPC for rejection of the plaint is concerned, the prayer cannot be granted at this stage in the present application as the defendant/applicant has been unable to make out a case for rejection of the plaint as" it has not demonstrated non-disclosure of a cause of action, undevaluation, insufficient stamping or bar set up by any law.