IN THE HIGH COURT OF DELHI

Decided on: April 19, 1983

CORAM

THE HONOURABLE MR. JUSTICE S. RANGANATHAN

THE HONOURABLE MR. JUSTICE D.K. KAPUR

F.A.O. (OS) No. 135 of 1980

Ajay Industrial Corporation, Delhi ... Appellant

Versus

Shiro Kanao of Ibaraki City, Osaka, Japan ... Respondent

Mr. Parvin Anand, Advocate for the Appellant.

Mr. Anoop Singh with Miss Neena Gupta and Mr. H.P. Singh, Advocates for the Respondent.

JUDGMENT

S. Ranganathan, J.

These two appeals can be disposed of together as they are directed against the common judgment of a learned Judge of this Court dismissing two petitions (C.O. Nos. 2 & 3 of 1974) moved by the appellant under Section 64 of the Patents Act (39 of 1970) herein after referred to as `the Act').

The appellant, Ajay Industrial Corporation, is a registered firm carrying on business in the manufacture and sale of reinforced plastic hose pipes. The respondent, Shiro Kanao, is a Japanese national represented in these proceedings by a firm called DePenning & Depending, Calcutta. He is the proprietor of two patents which have been registered with the Controller of Patents of India, having its office at Calcutta. One bears patent No. 124526 granted on 19.12.1969 and relates to the `method and apparatus for continuously producing a spiralled

tube of plastic resin" and is the subject-matter of C. O. 2/74. The other patent No. 114519 granted on 6.12.1967 is in respect of `flexible plastic hose' and is the subject-matter of C.O. 3/74. The applications filed by the appellant on the original side of this Court seeking the revocation of these patents granted in favour of the respondent are stated, at the Bar, to be the counter-offensive to a suit on behalf of the respondent seeking injunction and damages against the appellant for "infringement of this patent rights." The suit is said to be pending in a Court at Ahmedabad.

The grounds on which the revocation of the two patents is sought are set out in some what involved and cumbrous language in paragraph 7 of C. O. 2/74 and paragraph 6 of C.O. 3/74 but have been put forward in much simpler terms at the time of arguments before the learned Judge and before us. The short point urged so far as patent No. 124526 is concerned is that it is not workable, does not achieve any efficiency or labour-saving and cannot be described as an invention since spiralled tubes of plastic resin have been known and been in production for a long time, such prior to the date when the respondent's patent was registered. In regard to pageant No. 114519, again, the appellant's case was that flexible reinforced plastic pipes or hoses have been known to the trade as well as the public for a long time prior to 6.12.1967 and there was no "invention" in regard there to for which the respondent could have sought or obtained a patent. More particularly, it was alleged, such flexible reinforced plastic pipes have been the subject-matter of several patents granted earlier and that, on this short ground itself, the respondent's patent should be revoked. These applications have been rejected by the learned Judge and hence these appeals.

Before proceeding to consider the contentions ably advanced by Sri Pravin Anand on behalf of the appellants, it is necessary to deal with a preliminary objection sought to be raised on behalf of the respondent. In fact, at the earlier stages of the hearing, Shri Anoop Singh stated that he had instructions not to raise this preliminary issue and to ask for a decision of the applications on merits but, later on, the respondent decided to context the appeals on that point as well.

The objection raised is that the Delhi High Court has no jurisdiction to entertain these applications and that they ought to have been filed either in the Court at Ahmedabad where the suit filed by the respondent is pending or at Calcutta where the patents in question stand registered. In support of this contention, counsel places reliance on the scheme of the Act and on a Full Bench decision of this Court reported as Girdhari Lal v. Gian Chand Jain & Co. (AIR 1978 Del. 146). We find, however, that neither is of help to him. So far as the statute is concerned, Section 64 provides that, subject to the provisions of the Act, a patent may be revoked by the High Court (i) on the application of any person interested or of the Central Government, or (ii) on a counter-claim in a suit for infringement of the patent. Taking up (ii) first, a suit for infringement of a patent can be instituted in any court not inferior to a District Court having jurisdiction to try the suit. Section 107(1) enables the defendant in such a suit to take up as a ground for defence every ground on which the patent can be revoked. He can also seek, by way of a counter claim, the revocation of the plaintiff's patent. As mentioned earlier, the respondent in this case has filed a suit for infringement of its patent in a Court in Ahmedabad. The appellant could have sought the revocation of the respondent's patent by way of a counter-claim in that suit. Had it done so, the suit and counter-claim would have had to be transferred to the High Court for decision under the proviso to Section 104. The High Court in that event, will presumably be the one having revisional and appellate jurisdiction over the Court in which the suit is pending : in the present case, the Gujarat High Court. But that is not the step taken by the appellant and this provision has no application. Turning to (i), the only guidance that the statue provides regarding the High Court in which the application should be moved is contained in the definition of Section 2(i) which reads:

> "High Court" means (i) in relation to the Union Territory of Delhi.....the High Court of Delhi;
>
> ... ...
>
> (viii) in relation any other State the High Court for that State."

This definition is not helpful for its says nothing more than that the suit should be instituted in the High Court of the State in relation to which the matter arises; it does not define the nature, or method of determination, of the relationship between a State and the matter in question. What, then, can be the basis on which one can decide which High Court should be approached in a particular matter? What is to be the basis of the co-relation? Sri Anoop Singh suggests it can only be either the place of registration of the patent or the place in which a suit for infringement has been filed, if any, and none else. This does not appear to be correct. It will not be possible to correlate the jurisdiction with the State in which the place of registration of the patent is situate for all registration of patent in India is done only at Calcutta and three or four other cities in India and the elaborate provisions in Section 2(i) will be totally superfluous if the intention was to confine jurisdiction to the four or five High Courts having jurisdiction over these cities. The statute would then have easily defined the High Court as the one having jurisdiction over the place of registration of the patent sought to be revoked. It is also obviously not possible to restrict jurisdiction to the High Court with in the territorial jurisdiction in which a suit for infringement is filed. For, while no doubt such a High Court will be the forum for deciding the issue when the revocation of a patents is sought by way of a counter-claim (vide Section 104, proviso), that provision is not exhaustive. The revocation of a patent need not be sought for only by way of a counter-claim. Section 64 confers an independent right on any person interested in a patent or the Central Government to seek such revocation. Such an application can be made even when no suit for infringement is pending against the applicant. it can also be made where such a suit is pending. There is no statutory requirement that in a case where a suit for infringement is pending revocation of the patent can be sought for only by way of a counter-claim and not by way of a separate and independent application. Thus, the statutory provisions show that the remedy of seeking the revocation of a patent from a High Court is not correlated to the pendency of an action for infringement but is made available to any person who

finds that his commercial interests are likely to be jeopardised or injured by the claims of the owner of a patent. If this apprehension has already become a reality by reason of a suit for infringement filed against him he is given a right to seek revocation by way of counter-claim in that suit. But it is also open to him to seek the remedy by an independent application, whether or not a suit against him has already been instituted. It would not, therefore, be correct, in principle, to confine jurisdiction to the High Court having ordinary original or appellate jurisdiction over a place where a suit for infringement may have been filed. It does not solve the problem in a case where no suit for infringement has been filed. The plea of Sri Anoop Singh that an application under Section 64 should be filed only in the High Court at the place of registration with the exception that, in case there is a pending suit for infringement, the application may be filed also in the High Court having jurisdiction over the place where the suit is filed cannot, therefore, be accepted. The statute would have more clearly spelt out the position if such were its intendment.

The Full Bench decision relied upon by Sri Anoop Singh does not also support the narrow interpretation that he contends for. That was a decision under the Designs Act, 1911 but the scheme of the provisions are similar in the two statutes. In fact Act 2 of 1911 was originally the Patents & Designs Act and the Law of Patents was excluded there from and separately codified in 1970. In that case, both the appellant and respondents were carrying on the same trade at Delhi and the application for the cancellation of two designs registered by the appellant was filed in this Court. The appellant sought to raise a plea that the Delhi High Court had no jurisdiction to entertain the applications and that only the Calcutta High Court (with in whose jurisdiction the designs had been got registered) could do so. This contention was repelled by the trial Judge who held that any High Court in India including the Delhi High Court, could entertain the applications. In coming to this conclusion, he interpreted Sections 2(7), 51A and 64 of the Designs Act in the light of the provisions earlier contained in Sections 26, 28, 29 and 34 of the repealed Patents & Design Act which had clearly

indicated that the application could be filed and disposed of by any of the High Courts. He also followed an earlier decision of a Division Bench of this Court in Neiveli Ceramics and Refractories Ltd. Vadalur (Tamil Nadu) v. Hindustan Sanitaryware and Industries Ltd, Calcutta (AIR 1974 Del 105) and of a single Judge in Ailga Rubber Works v. Good day Rubber Industries (C.O. 2-D of 1966 decided on 25.11.1966). The appeals preferred against the order of the learned single Judge were referred to the Full Bench Deshpande, C.J. (with whom Chadha J. agreed) held :

> "The petition for cancellation of the design under Section 51-A would lie to that High Court within the territory of which subject-matter has the necessary nexus. The subject-matter consists of a series of connected events beginning with the registration of the design in the register of designs by the order of the controller and ending with the impact of the said design on the rights of the competitors at such places at which the trading of the competitors is injured or affected by the enjoyment of the copyright by the registered proprietor of the design basing his right on the registration of the design. An application may, therefore, be filed either in the High Court having jurisdiction over the place at which the design is registered or in the High Court having jurisdiction over the place at which the enjoyment of the copyright by the registered proprietor causes injury to the commercial interests of the applicant. Briefly, the application would be made in the High Court, the local jurisdiction of which has a nexus with the subject-matter or the cause of action of the application. It follows, therefore that the application can not be made in any other High Court merely because the applicant chooses to do so. The applicant would have to show jurisdiction in the High Court to which the application is made and such jurisdiction can be shown only by establishing connection between the cause of action and/or subject-matter of the application and the territory with in the local jurisdiction of the High Court. While such an application can always be made to the High Court within the local limits of which the registration of the design is made the jurisdiction is not confined to that High Court, but would extend to any other High Court within the local limits of which a part of the cause of action and or subject-matter of the application may arise."

Anand J. dissented, He observed:

> "Having regard to the peculiar scheme of the Act, the provisions of Section 2(7) of it and even on an application of the general principles of jurisdiction of

> courts, every High Court in India would have jurisdiction to entertain a petition for the cancellation of registration of a design under Section 51-A of the Act by virtue merely of the dynamic effect throughout the territory of India of the registration of a design obviating the necessity of any further action or inaction or any other nexus between the territory and the subject-matter.
>
> Section 51-A merely lays down the conditions which would justify cancellation of registration and the person who may seek it. It has no relevance to the Court which may entertain such a petition and it would not, therefore, be proper to read into Section 51-A any principles for the determination of the question of the jurisdiction of the Court. So far as the need for a nexus is concerned, it has its genesis in the principles of general jurisdiction which would be inapplicable because of a clear indication with regard to jurisdiction in Section 2(7) of the Act. Even otherwise, any search for a nexus between the subject-matter and the territory would be superfluous because the dynamic effect of the static entry in the register provides sufficient nexus. What establishes the nexus between the different territories of India and the registration is the fact that the two-fold consequence of registration, both positive and negative, operate, throughout the territory of India. No further nexus is, therefore necessary to confer jurisdiction on the High Courts, and if such a nexus was necessary, one would have found appropriate indication of it in the statute itself."

It is, therefore, seen that the earlier view of this court was that an application of this type could be filed in any High Court in India. The decision of the Full Bench, by a majority, took a restricted view but even the Full Bench does not restrict jurisdiction in the manner contended for by Sri Anoop Singh. On the ratio of the Full Bench, the application could be filed in the Calcutta High Court or any other High Court within whose jurisdiction the commercial interests of the applicant are affected by the enjoyment of the copyright by the registered proprietor. This would include not only the High Court having jurisdiction over a place in which a suit for infringement is filed but also that having jurisdiction over a place where the assessee carries on business and finds that his rights to carry on the business freely is sought to be restricted on account of the claim of someone else to a patent or design in respect of the goods dealt in by him. It is true that this interpretation may expose the registered proprietor of a patent to applications filed in different High Courts by persons carrying on business

within their respective jurisdiction. But, (a) that was also the position under the earlier decisions; (b) that is because the registration of the patent though done in one place affects persons carrying on business in different jurisdictions; and (c) the only solution that can avoid such multiple action against the proprietor of the patent (viz. to restrict jurisdiction only to the High Court with jurisdiction over the place of registration of the patent) is clearly not countenanced by the statute.

It is perhaps possible to advocate an intermediate view, narrower than the one enunciated by the Full Bench and slightly broader than the one suggested by Sri Anoop Singh. This would be on the basis of the provisions of the Code of Civil Procedure. The suggestion can be that such applications can be filed either at a place where the patent-holder resides or carries on business or a place where the cause of action (in a more restricted sense) arises viz, the place where the patent is registered or the place or places where the applicant has been sought to be made liable for infringement of patent. It can perhaps be said that where no such action against the applicant is pending, it would not be correct to say that he has a cause of action against the registered proprietor other than the one arising as a result of the registration of the patent. However, this may also be not quite a correct approach. For instance, to take the instant case itself, the applicant is facing an action for infringement only in Ahmedabad. But it is selling the same goods in Delhi as well and may face a similar action in respect thereof at any moment either in the form of a separate suit or even by way of an amendment to the existing suit. It may, therefore, be unrealistic to say that he has no cause of action arising in Delhi but has one only at Ahmedabad. Thus, the suggestion of such a modified interpretation is also not free from difficulties. Whether we go by the Full Bench (as we do and should) or by the earlier decisions of this court, the Delhi High Court has jurisdiction to entertain the appellant's applications. The objections of Sri Anoop Singh as to lack of jurisdiction are, therefore, over ruled.

Coming now to the merits of the applications, it will be easier first to dispose of the appellant's claim for the revocation of patent No. 124526 for the learned

Judge has rejected it on the short ground that the appellant has no locus standi to maintain the application as it cannot be said to be a "person interested" who alone is competent to maintain and application under Section 64. It has been mentioned that patent No. 124526 is entitled "A method and an apparatus of continuously producing a spiralled tube of plastic resin" of which the respondent claims to be the inventor. In other words, the patent protect a method and apparatus invented by the respondent for manufacturing spiralled tubes of plastic resin. The short point made on behalf of the respondent in regard to this patent, and accepted by the learned Judge, is that since admittedly, the appellant is not engaged in the manufacture or trade of any machinery or apparatus of the kind patented by the respondent, it cannot be treated as a person interested in this process patent. Counsel for the appellant contests the correctness of this contention. He says that as the appellant is alleged to have infringed the respondents' patent in respect of the "flexible plastic hose pipes" it is a person interested not only in the patent for the article but also that for the "method and apparatus" for its manufacture. It is pointed out that under Section 48(2)(b) of the Act, a patent for a method or process of manufacturing an article or substance confers on the patentee the exclusive right by himself, agents or licensees to use or exercise the method or process in India. It is, therefore, said that, although the appellant is not manufacturing or dealing in machinery of the type covered by the patent, it is entitled to seek revocation of the patent as a measure of defence of its use of the apparatus by which this article was obtained. Attention is drawn to the very wide definition of "person interested" in Section 2(1)(t) of the Act which reads :

> " `Person interested" includes a person engaged in, or in promoting, research in the same filed as that to which the invention relates".

and it is contended that, in the circumstances, the appellant is entitled to maintain an application for revocation even in respect of patent No. 124526.

After giving our careful consideration to the contentions urged, we are inclined to agree with the conclusion of the learned trial Judge on this issue. It is

unnecessary, in deciding this issue, to keep in mind that the respondents have registered two patents (one of which may be described as a process patent and the other as an article patent for purposes of convenience) and the appellant's please in regard thereto have to be separately and independently considered. The appellant is manufacturing and selling certain P.V.C. hose pipes which, according to the respondent, constitute an infringement of their article patent and this being so, the appellant has every right to defend the manufacture and sale of these pipes and seek revocation of the respondent's patent in regard thereto. But, so far as the process-patent (in respect of the apparatus or machinery is concerned), what is the position? How does the appellant claim to be interested in the said patent? What is the case made out by it in this regard? It is not the appellant's claim that it is manufacturing and/or trading in such apparatus or machinery. It is not the case of the appellant that it is using the machinery patented by the respondent for the commercial purpose of manufacturing hose pipes and that, as it has been or can be charged with infringement's process patent under Section 48 of the Act by reason of such user without licence, it is so interested commercially in the patented process as to be entitled to seek the revocation of the respondent's process patent. Again, the applicant has not pleaded or let in evidence the allegations contained in the respondent's plaint in the suit for infringement filed at Ahmedabad and no case has been made out in the present application that the respondent has charged, of is likely to charge, the applicant with the use of a manufacturing process or apparatus which through not there on patented by him constitutes an infringement of his process patent. The evidence of the appellant's partner (who was its only witness) in this regard may be read with interest. He said:

> "The petitioner firm has been getting a machine for the manufacture of various types of hoses. In this machine various dies are used. The petitioner has used the die for the purpose of manufacturing the hoses in question in 1973. I cannot say in which month the die in question was got prepared by us. There are hundreds of manufacturers for the manufacturing of the machine required for the production of the hose pipes. The machine for the production of hose pipes from P.V.C. is common. The machine is called extruder. The petitioner firm got

> the machine viz. the extruder in 1961. It is a local made machine. This machine was manufactured by Dhiman Engineering works, Churiwalan, Delhi. D.I. in question for the manufacture of P.V.C. hose pipe was manufactured by Zodian Dental Corporation, D-27, Mayapuri Industrial Area, New Delhi."

In other words, the appellant claims to be using a machinery which was under manufacture by some other firm and that too, long before the respondent's patent was got registered. The questions whether the said machinery constitutes an infringement of the respondent's patent or whether it is the respondent's patent that needs revocation on the ground that it embodies nothing novel but was a mere reproduction of a machinery already in the market and a process that was well known are not issues in which the appellant is interested. They are issues to be fought out by the respondent, if he considers it necessary, with the other manufacturer(s) `who may be manufacturing such machinery and allowing others like the appellant to use it in alleged infringement of his patent. In these circumstances, there is no issue between the parties regarding the method or apparatus used by the appellant for manufacturing the article (in respect of which no doubt there is an allegation of infringement) and it is difficult to see how the applicant can be said to be interested in the process patent so as to seek its revocation.

The statutory definition of a `person interested' is not of much help to the appellant. It is only intended to bring within the scope of the definition persons engaged in research in particular filed and has no relevance to this case. We have, therefore, to fall back upon the general meaning of the expression. It is no doubt true that `person interested' is an expression of broad amplitude and is perhaps wider than the expression `person aggrieved' used in the Trade and Merchandise Marks Act, 1958 (Section 56) or the Copyright Act, (Section 50). But it has to be understood and interpreted in the context of Section 64 in the light of facts out of which the question arises and not in vacuum. We do not think that it can be so extended as to cover a person in the opposition of the appellant in the present case qua the patent the revocation of which is sought. We

do not say that a person who is not manufacturing or dealing in a patented machinery but is merely using it can never be said to be `interested' in it so as to be entitled to seek its revocation. We only wish to say that, whether a user has an interest, for this purpose, will depend upon the facts and circumstances of each case and it cannot be laid down as a general proposition or an invariable rule that every person, merely because he uses certain machinery, will be entitled as of right to seek revocation of the patent obtained by the manufacturer in regard to such machiner. To lay down any such rule will make it impossible for such a patentee to enjoy his patent rights; mere users of his machinery or that of his competitors in different parts of the country can be set up to file applications in different courts seeking its revocation. However, it is possible to conceive of circumstances where even a person who merely uses a certain machinery or device that is patented is made to face, or apprehends being made to face, charges of infringement for such user in which case certainly he will be entitled, in pure self defence, to seek revocation of the patent itself. In other words, the mere use by A of a machinery patented by B for the production of certain goods in which he deals does not entitle him to seek revocation of A's patent unless B voices a suggestion or is likely to make an allegation that his patent is being infringed. So also, the user by A of a machinery patented by C for production of the goods dealt in by him does not confer an interest which will enable him to seek revocation of a patent taken out by B regarding the process or apparatus unless there is a suggestion or allegation by using C's machinery, A has infringed B's patent rights. In our opinion, a `person interested' within the meaning of Section 64 must be a person who has a direct, present and tangible commercial interest or public interest which is injured or affected by the continuance of the patent on the register. We are unable to see any such interest in the present case, for the reasons already discussed.

A reference was made to certain cases in which the meaning of this expression has been considered. In the Full Bench case earlier referred to, this covert considered the scope of this expression in the context of the issue of jurisdiction

and equated it to a person aggrieved on account of his personal interest being prejudiced or injured or to a person who, pro bono publico, initiates a public interest litigation and makes an application to vindicate a legal injury to the public interest. The present appellant falls in neither category. In Globe Industries Corporation's Patent (1977 R.P.C. 563) the Court of Appeal answered in the affirmative the question whether an applicant company which had no concrete plans to trade in the United Kingdom but had an established trade in Hong Kong, could seek the revocation of a British patent obtained by another company. Both were Taiwaness companies and the decision turned on the circumstance that any British patent could be registered in Hong Kong within a period of five years of its date of issue in the United Kingdom. It was held that an interest, if otherwise sufficient, which exists in any of the British colonies, protectorates or the Commonwealth countries, where, by local laws or ordinances English Letters Patent has immediate effect or may be made operative by registration, does make the possessor of it a `person interested' within the relevant sections. This aspect is of no relevance to the issue before us. There is, however, a discussion of the "principles" for determining when a person is an `interested person' for the purpose of the relevant statutory provisions Graham J. had enunciated them as follows in Medcline AG's Patent (1973 R.P.C. 91) :

> "The principles in my judgment are as follows. The circumstances of each case must be considered, and it is wrong to lay down any hard and fast rule as to the precise nature or extent of the interest which justifies locus. (2) The onus of establishing locus lies on the opponent or applicant for revocation. (3) If the opponent or applicant for revocation can show that he has some genuine interest which will be prejudiced and (that) if the opposition or application to revoke is not frivolous, vexatious or black-mailing, then locus should be granted even if the patentee can throw some doubt on the exact extent of the opponent's interest".

Approving these principles, Scarman LJ. observed :

> "The case law to which I have referred to shows that the interest must be commercial interest and that it must be a genuine interest. I also shows that

> there must be the existence, or likelihood, of real prejudice. But once the court is satisfied on these matters and also that the opposition, or application, is not frivolous, vexatious or a piece of Blackmail, then the interest shown is sufficient to enable the opposition or application to proceed".

Goff L.J. agreed and observed that the "prospect of a prejudice must be real, not speculative or fanciful, and it must be prejudice to represent commercial interest" Applying these principles, we are not satisfied, on an examination of the facts of the present case that the applicant has established the existence or likelihood of a real prejudice to its present commercial interest in so far as the process patent is concerned. We are, therefore, of opinion that C.O. 2/74 was rightly dismissed.

We now turn to the application seeking revocation of the article patent (C.O. 3/74). The learned Judge has dismissed this application on the merits. The article covered by Patent No. 114519 is a "flexible plastic hose". Sri Anand says that at the time of seeking a patent for this article, the respondent had to give a complete specification which describes and ascertains the nature of this invention and the manner in which it is to be performed and also specifically put forward his "claims" of invention. The respondent had made the following "claims" for his article:

> "1. A flexible hose of synthetic resin comprising a cord wound helically around the longitudinal axis thereof, the successive turns of the cord being spaced in the direction of the longitudinal axis, said cord being substantially unstretchable, the resistance thereof to flection being substantially zero, said cord being embedded in and fixed to the wall of the hose, the embedding place for the cord being located outwardly of the neutral axis position for the peripheral bending of the wall in the absence of the cord.
>
> 2. A flexible hose as claimed in claim 1, wherein said cord is made of synthetic material.
>
> 3. A flexible hose as claimed in claim I, wherein said cord is composed of a bundle of a plurality of length of fiber.
>
> 4. A flexible hose as claimed in claim 1, wherein said cord is composed of a bundle of a plurality of lengths of a thin natural fiber.

5. A flexible hose as claimed in claim 1, wherein said cord is composed of a plurality of thin metallic wire.

6. A flexible hose as claimed in claim 1, wherein the cross-section of the said cord is elongate in the direction of the logitudical axis of the hose.

7. A flexible hose as claimed in claim 1, wherein and cord is embedded in a helical reinforcement core of synthetic resin embedded in the hose wall.

8. A flexible hose as claimed in claim 1, wherein said cord is embedded in the hose wall outwardly of a helical reinforcement core of synthetic resin embedded in the hose wall.

9. A flexible hose of synthetic resin substantially as herein described with reference to the accompanying drawings".

It will be seen that claims 2 to 8 only refer back to the basic feature in claim 1 and that claim 9 is of a general nature. An analysis of the contents of claim 1 and a perusal of the preamble given by the respondent to these claims, according to the learned counsel for the appellant, clearly show that the use of two plastics for the manufacture of hose pipes was well known even earlier : it was also known that one plastic should be harder than the other and should be arranged spirally over the other and made a part of the wall itself. Flexible tubes with helically wound bands were known and it was also known that such bands could be made of paper, textiles, fibres, metals, glass or other plastics. This was also borne out by Ext. p-4 and several other patents exhibited by the appellant. The respondent, continues Sri Anand, claims three new features for his invention : (a) that the hose pipes were truly circular in cross-section unlike earlier pipes ; (b) that the invention resigns in the placement of the cords above the bottom access and below the periphery ; and (c) that the cord was embedded in the hose-wall. Sri Anand submits that the first was no special feature as all plastics hose pipes will remain circular within the limits of elasticity, that there can be no subtle placement of the cord in the hose-wall and that any manufacturer or workman in the plastic industry known that the embedding of the cord should be in the hose-wall itself and in the upper half of the thickness of the cord if it is to withstand stress and strain. He says, therefore, that there was nothing novel or inventive

about the plastic hose pipes patented by the respondents that was not already there in several other patents of much earlier date.

Learned counsel also relies, in support of his contention, on the evidence tendered on behalf of the respondent and on the findings of the learned trial Judge. The respondents' witness was H.T. Patel, a technology graduate with specialisation in plastic, and a manufacturer of P.V.C. hose pipes with licence, machinery and technical know how from the respondent. He has been confronted with an article (Ex. P. 37) manufactured by M/s. Dunlop India Ltd. He admitted that M/s Dunlop India were the first manufacturers of reinforced P.V.C. hose pipes in India and were manufacturing hose pipes under a licence from a Greek patent of 1961 (Ex. P. 10) but, according to him, they started manufacturing these pipes only in 1968-69. He stated that he was the second manufacturer of such hose pipes under the respondent's licence but that though he had not visited the factory of M/s Dunlop India Ltd. he could say from experience and knowledge "that the process of manufacture of M/s Dunlop India Ltd. is different from the process of manufacture under the patent of the respondent. "According to him, the process of manufacture of reinforced P.V.C. pipes under the respondent's patent was simpler and more economical than the process adopted by M/s Dunlop India Ltd. He stated in cross-examination that "the hose pipes manufactured by M/s Dunlop India Ltd....and by my company are the same but the process of manufacture of the two hose pipes is different" and when asked to compare the product of Dunlop India Limited. (Ex.P. 37) with those of the respondents (Ex.P-38 and R 1 and R 2) the only difference he was able to point out was :

> "In Ex.p. 37 there are perpendicular lines on the inside of the hose pipes. These lines appeared to be on account of the process adopted by the manufacturer. There are no perpendicular lines on the inside of Ex.P. 38, R 1 and R 2".

He stated that there were a number of manufacturers of hose pipes in India and stated that Ex. Nos. p. 36, 38, 39, 40, 41 and 42, whoever manufactured them, were manufactured by the same process that had been adopted by the respondent

under the registered patent. Summing up this evidence, the learned Judge gave the following findings :

> "A number of samples produced of different hose pipes on record show that they appear to have adopted the same process of combining the soft and hard plastics, mostly helically wound in order to lend them flexibility. The names of the manufacturers are however not shown on them. However there is no dispute that Ex. p. 37 is manufactured by Dunlop India Ltd. and according to respondent's witness the hose pipes manufactured by this concern and the respondent are the same though the process of manufacturer are different. So far no exception has been taken by the respondent to the hose-pipes produced by the Dunlop India Ltd. This appears to have been because of the different methods applied, although in the finished form they are almost similar. The strips which exist on the inner surface of the hose-pipes of Dunlop India Ltd. are basically the result of the method of manufacture adopted as in that process the inner strips assist in pulling the hose-pipes out of the apparatus. Nothing material has been placed on record to show that in utility they make much difference from those of respondent's hose-pipes.
>
> The patent Ex. p-4 by the Greek citizen which is said to have been adopted by the Dunlop India Ltd. was got filed on 18th December, 1961. It was thus much before the patent submitted by the respondent. It dealt with reinforcing the wall of flexible pipes particularly of rubber-make by plastic materials which were harder and more resistant than that forming the wall itself. It further brought out the process for the fabrication of pipes from plastic materials whereby different materials of density were introduced through different ports of apparatus, the denser plastic material forming the core. This thus shows that the combination of hard and soft plastics had already been taken note of and was no longer an unknown factor which requires further intensive invention. What the respondent did later was to create a method and apparatus which rendered easy and smooth production of hose-pipes. The emphasis thus again was on the method and apparatus and not the hose-pipes which involve combination of hard and soft plastics.
>
> In the circumstances what needs to be protected so far as the respondent is concerned is the method and apparatus of producing the hose-pipes of the types Ex. R 1 and R 2. In case therefore similar type of hose-pipes are produced by method and apparatus other than employed by the respondent it cannot be said that the invention of the respondent is being infringed or pirated. In this view of

> the matter I am unable to revoke this patent of the respondent as well, primarily for its method and apparatus adopted."

Sri Anand submits that, having come to the conclusion that the article (Ex. p-37) and the articles manufactured by the respondent are the same, and, having regard to the fact that Ex. P. 37 had been manufactured by Dunlop India Ltd. under Ex. P. 10 as well as another Greek patent (Ex. p.4) registered as early as 1961, the learned Judge ought to have granted his application for revocation. He argues that, while dealing with the issue regarding the article patent, the court is only concerned with the sameness or otherwise of the articles produced irrespective of the method of manufacture. Once the learned Judge come to the conclusion that the patented article was the same as the one that had been produced by M/s Dunlop India Ltd. under the Greek patent he should have revoked the respondent's patent as it was later in point of time and embodied no originality, novelty or invention.

We are of opinion that the contentions of the learned counsel for the appellant fail to take note of the complex and subtle technical refinements involved in devices and inventions of the type under consideration. To say that the patented article consists only of a plastic tube with cords of plastic or other material helically wound around it had hence that the respondent's patent has merely duplicate existing and known processes and involved no inventive steps is to oversimplify the whole issue. That the real question is not as simple as that will be clear from a variety of circumstances. In the first place, obtaining registration of a patent for an article which, according to counsel for the appellant, is so widely known produced and marked in the country for several years is not at all an easy matter. As pointed out by Sri Anoop Singh, registration of a patent is not granted for the asking. Sections 12 and 13 of the Act make provisions for searches to be made in respect of all patent applications and also for an investigation, if needed, to see whether the invention has been claimed or anticipated by publication in any specification filed in any earlier application. We are mentioning this merely to indicate that the existence of earlier patents, if

any, in regard to the same article is not normally likely to be lost sight of, though we agree with the appellant that, merely because the respondent's patent has been registered, it cannot be assumed that it embodies some new invention nor its revocation refused on that ground alone. Secondly, the evidence on record shows the existence of not one but a number of registered patents the subject-matter of which, on a cursory reading, appears to be the same, viz., flexible plastic hose pipes. The specifications in regard to these patents marked Ex. Nos. p-3 to 31 (with a new exceptions noted by the learned Judge) show that their main object is to produce plastic hose pipes with varying degrees of flexibility. In a number of these cases, the object is sought to be obtained by the process of helical winding of a cord or bands across a horizontal plastic tube, while in some of them different process have been employed. Ex. p. 3 dated 12.8.1957 refers to the existence of rigid rubes of polyvinyl chloride which could bend in cold. A process was claimed for producing flexible tubes of helically wound bands which were corrugated in a direction transverse to the axis of winding by compression and thermally welded. Ex. p. 4 of 18.12.1961 had the object of reinforcing the wall of flexible pipes (particularly of rubber) by plastic materials which are harder and more resistant than that forming the wall. Ex. p. 8 of 7.2.1963 provided tubing comprising an inner core and a covering layer surrounding it. Ex. p. 10 of 6.11.1968 talks of tubes and hoses of plastic or similar materials which are in an unstable plastic condition being calibrated internally or externally to an accurate cylinderical shape which is maintained for a period of time. Ex. p. 12 of 16.1.1963 provides a method for making an elongated, reinforced resinous article which is hollow in cross-section in which the article was solidified by heat in a die passage which was formed between a core in the die and its wall. Ex. p. 13 of 28.1.1960 devised a low-pressure conduit having an internal layer of flexible material, a winding or coil of wire about that layer and an external layer of flexible material about the wire. Ex. p. 14 of 24.1.1964 concerned a method suitable for producing pipes from threads laid helically and exially on the tube. In Ex. p. 19 (4.11.1957) it was claimed that

optimum efficiency of a hose having a reinforcing woven fabric embedded in rubber or other flexible material is got if threads or yarn of the reinforcement fabric, which run around in opposite directions, are so disposed to be each other as to make an angle of approximately 57o to the longitudinal axis. Ex. P. 24 (20.8.1957) concerned a method of forming plural wall tubing by placing strips of stock having spaced side edges within a length of the tube. Ex. P. 25 (14.11.1965) included hose pipes with an events number of helically wound strips of plastic material which will be suitable for use as suction of delivery hose. It is unnecessary to set out descriptions of the others. All these show that the article produced viz. flexible plastic hose pipe, though ostensibly alike, really varies from case to case on account of the different modes and methods by which a desired degree of rigidity and/or flexibility is achieved. This is done by utilising different kinds and types of reinforcement to the rubber or soft plastic hose. It appears to us that the grant of such a large number of patents most or all of which turn upon the basic twin elements, referred to by the learned counsel, clearly shows that minute but significant varieties of quality exists in the article produced and that it will be erroneous to characterise the products manufactured by these different processes as some or similar because of superficial likeness of the resultant product, or because basically they consist of a horizontal tube and a helically wound reinforcement made of an appropriate material. It also shows that the manufacturing process or method is also relevant in coming to a conclusion as to whether the article ultimately produced is or is not the same as, or one similar to, the article for which the respondent has got the patent and that the learned Judge has not erred in taking this circumstance into account.

We may also point out that the onus is on an applicant for revocation to prove to the satisfaction of the court that the registration of the patent sought to be revoked was not called for. This is clear from the very nature of the proceedings and has also been emphasised in judicial decisions : see, Halsbury, 3rd Edn., vol 29, p. 106 and Hoechst v. Uniclim Laboratories, AIR 1969 Bom 26. The appellant is seeking the revocation of the patent for an article which, according

to it, is an article which was in extensive production and covered by the Greek patent under which such hose pipes were being produced since 1961. It is of same relevance in this context that neither M/s Dunlop India Ltd. nor the respondent have taken steps to take action for the infringement of patent against the other. Actually there are two Greek patents one of 1961 and the other of 1968 and the respondent's statements that M/s Dunlop India Ltd. were manufacturing only under Ex. p. 10 of 1968 has not been controverted by any evidence on behalf of the latter company. The applicant is seeking, in 1974, the revocation of a patent granted as early as 1967. As pointed out by the Nagpur High Court in Bombay Aggarwal Co. v. Ramchand (AIR 1953 Nag. 155) relying on Canadian General Electric Co. v. Fade Radio (AIR 1930 P.C. 1), a patent should not be defeated after a along lapse of time when the challenge is based on oral testimony which is hard to check and which in this case is by persons who have no scientific knowledge of the intricacies involved. It is not sufficient to say that an article involves nothing more than the application of old or known principles. It was observed in Lallubhai Chakubhai v. Chimanlal & Co. (AIR 1936 Bom. 99):

> "A new and useful application of an old principle may be good subject-matter. An improvement on something known may also afford subject-matter : so also a different combination of matters already known. A patentable combination is one in which the competent elements are so combined as to produce a new result or arrive at an old result in a batter or more expeditious or more economical manner. If the result produced by the combination is either a new article or a better or cheaper article than before, the combination may afford subject-matter of a patent."

As pointed out by Cotton L.J. in Williams v. Nye (7 R.P.C. 62), "sometimes very slight alternations will produce very important results and there may be in these very slight alterations very great ingenuinity of the patents". The specification for the respondent starts with an acknowledgement that plastic hoses of good flexibility had recently been developed and purports to announce an "invention" concerning the same. It points out that the flexible hoses in existence had

disadvantage of their orally getting cracked under excessive tensile strain, particularly in the longitudinal direction of the base and of losing their truly circular or round shape. It points out that to overcome the difficulties, it was known to provide a flexible hose by helically winding hard plastics material and filling the space between the successive whole but that this hard core was also liable to get broken at the portion where stress concentrates under external violence. This method also made it difficult to get a hose of smooth inner surface and the resistance to the flow of fluid through the hose was considerably high, thus rendering this type of hose useful only in a restricted filed. These defects were sought to be overcome by the "present invention". The specification reads :

> "The flexible hose of synthetic resin according to the present invention comprises accord would helically around the longitudinal axis thereof, the successive turns of the cord being spaced in the direction of the longitudinal axis, said cord being substantially unstretchable, the resistance thereof to flection being substantially zero, said cord being embedded in and fixed to the wall of the hose, the embedding place for the cord being located outwardly of the neutral axis position for the peripheral bending of the wall in the absence of said cord. It may be noted that since the cord is free to flex even if it has a high young's modules and exerts a high resistance to tansion, the hose can satisfactorily maintain its flexibility regardless of the presence of the cord. If an external force is applied to a hose, tensile stresses are produced on the outer surface at the bent place and compression stresses are produced on the inner surface, with a neutral surface of bending stress formed in the intermediate wall.
>
> Thus, if said cord is embedded in the hose wall outwardly of said neutral surface of bending stress extends to the position where the cord is embedded because of the high resistance of the cord to tension, and since said position is adjacent to the outer surface of the hose wall, the tensile stresses on the outer surface of the hose wall are correspondingly decreased.
>
> Therefore, the hose has a sufficient touchness to withstand external forces and prevent the outer surface from cracking, which would otherwise occur owing to the tensile stresses.
>
> In other words, the material used for the hose wall is a soft synthetic resin which is most suitable only in point of being capable of improving the flexibility of the entire hose, thus rendering the hose superior in flexibility as a

whole, and the hose wall of.....synthetic resin maintaining the.....tightness or water-tightness of the hose has a greater part thereof subject to compression stresses and the remaining part subject to tensile stresses, thus protecting the hose wall and rendering the wall tough. Further, since the cord is embedded in and flexed to the hose wall, the binding between the cord and the hose wall is remarkably improved, allowing the hose to be used without the danger of delamination and rendering said toughness more reliable,

The hose according to this invention has no special difficulty in proving the hose wall of uniform over-all thickness with smooth inner and outer surfaces parallel with the longitudinal axis of the hose, and it is possible to provide with case flexible plastics hose which has no week portion to external force and which show minimum resistance to the flow of the fluid there through.

A principal object of the invention is therefore to provide a flexible hose comprising a cord embedded in a helical reinforcement core extending helically around the axis of the hose, said helical reinforcement core being made of a harder synthetic resin material than that of the hose wall to improve the binding between the cord and the hose wall so that the toughness of the hose can be satisfactorily maintained for many years even if the hose is repeatedly subjected to external forces.

Still another object of the invention is to provide a flexible plastics hose with the features as described above, which is easy to manufacture."

In other words, the "invention" addresses itself to defects in the existing addresses proceeds to set out devices for getting over these disadvantages. As pointed out by the Bombay decision earlier cited, the specification and claims have all to be read together and reasonably and benevolently construed. In the absence of any technical or expert evidence either indicating that these statements are wrong or that the article produced incorporates no new devices to get over these defects, it cannot be held that the patent embodies no new discovery or invention.

For all these reasons, we have come to the conclusion that the appellant has not discharged the onus that lay on it to establish that the respondent's patent could not have been registered and, therefore, needs to be revoked.

In the result, both the appeals fails and are dismissed. We, however, make no order as to costs.