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

\+ **CS(COMM) 1222/2018**

COMMUNICATION COMPONENTS ANTENNA INC..... Plaintiff

Through: Mr. Siddhant Goel, Advocate.

versus

ACE TECHNOLOGIES CORP. AND ORS. ..... Defendants

Through: Mr. Sandeep Sethi, Sr. Advocate with Mr. Vineet Rohilla & Mr. Rohit Rangi, Advocates (M-8800558037)

CORAM:
JUSTICE PRATHIBA M. SINGH

O R D E R

% 10.03.2022

1. This hearing has been done hybrid mode.

CS(COMM) 1222/2018

2. The present suit for permanent injunction restraining infringement of Indian Patent No. 240893 *(hereinafter "IN'893")* along with damages, rendition of accounts of profits, delivery-up, *etc* was filed in 2018. The Patent is titled *'Asymmetrical Beams for Spectrum Efficiency'*. The Plaintiff, a Canadian company, is engaged in manufacturing, selling cellular base station products and services relating to the telecommunication industry. It is selling a large number of telecommunications equipment.

3. The suit patent was originally filed as a PCT application on 19th March, 2007. The domestic phase application in India was filed on 5th August, 2008, claiming priority from a Canadian application. IN'893 was granted on 9th June, 2010 and the term of the patent ends on 18th March, 2027. The suit patent is not a standard essential patent ('SEP'). However, the Plaintiff has licensed the patent to various parties.

4. The suit was filed against the Defendant No. 1, which is a company

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based in South Korea, which is also in the business of manufacturing and selling antennae for the telecommunication industry. Defendant Nos. 2 to 4 are associated companies of the Defendant No.1 and part of its business network. In the suit, detailed arguments were heard at the interim stage. Vide judgment dated 12th July, 2019, directions were issued by the Court to the Defendant for furnishing of bank guarantee and future deposits. The relevant extract of the order reads as follows:

> *"81. Insofar as the sales made prior to date of suit to the tune of $64,405,583, which, at the current rate of exchange (1USD = approx. Rs.68) comes to Rs.437,95,79,644/- the Defendants are directed to give a Bank Guarantee for a sum of Rs.40 crores, which is approximately ten percent of the above amount.*
>
> *82. Insofar as the sales made during the pendency of the suit are concerned, the total sales are to the tune of $21,835,000, which come to Rs.148,47,80,000/-, ten percent of which is approximately Rs.14.5 crores. The Defendants are directed to deposit the Bank Guarantee and the said sum with the Registrar General of this Court, within one month from date of judgment. If the Defendants do not comply with the above directions within one month, the Defendants shall stand restrained from manufacturing, selling, offering for sale any models of antennae which infringe suit patent number IN 240893."*

5. The said judgment was challenged before the ld. Division Bench in ***FAO(OS)(COMM) 186/2019*** titled ***Ace Technologies Corp & Ors. v Communication Components*** and thereafter before the Supreme Court in ***SLP No. 21938/2019*** titled ***Communication Components Antenna v. Ace Technologies Corp & Ors***.

6. The Supreme Court vide its order dated 20th September, 2019 restored the Single Judge's order and directed that the deposit of bank

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guarantee be made within a period of four weeks. Further, two applications were filed by the Plaintiff being ***I.A. Nos. 10684/2019*** & ***13480/2019***. The said applications were decided in this suit on 31st October, 2019 and directions were issued for making continuous cash deposits in terms of the order dated 12th July, 2019. The order reads:

> *"19. Consequently, it is clarified that the condition imposed in paragraph 82 of the judgment dated 12.07.2019, with regard to sales made of the antennae in question during the pendency of the suit, i.e. a deposit of 10% of the sales consideration, operates in respect of sales made after 12.07.2019 as well. The defendants are directed to submit a monthly statement of accounts on affidavit alongwith the deposit required in respect of the sales made in that month, if any. The affidavit will be filed, and the deposit made by the 15th of each month (commencing 15.11.2019) in respect of sales made in the preceding month. The first such affidavit will disclose the sales made after 12.07.2019 and orders passed by this Court with regard thereto. All amounts deposited with the Registrar General, pursuant to the judgment dated 12.07.2019 and this order, will be kept in an interest bearing fixed deposit, and renewed periodically, subject to further orders.*
>
> *20. In view of the aforesaid, the corporate guarantee furnished pursuant to the order dated 30.08.2019 must also be replaced by a deposit in the like amount. The defendants are directed to do so within four weeks from the date of this judgment"*

7. This order was also upheld by the Division Bench in ***FAO(OS)(COMM) No. 338/2019*** dated 28th November, 2019.

8. Parallelly, this very suit patent was also subject matter of suit no. ***CS(COMM)-977/2016*** titled ***Communication Components Antenna Inc. v. Mobi Antenna Technologies*** which was also considered by the court in

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detailed decision dated 12th July, 2019. In the said suit, after a full-fledged trial being held, the ld. Single Judge took the view that the patent is valid insofar as the grounds raised under Section 64 (d), (e), and (f) of the Patents Act, 1970 *(hereinafter "Act")*. Thus, the ld. Single Judge held that the patent was novel and also involves inventive step and the ground of obviousness was not made out. However, ld. Single Judge further held that the suit patent is liable to be revoked under Section 64 (h), (k) of the Act. The relevant part of the judgment reads as under-

> *"40. The defendant no.1/counter claimant in its written arguments, with respect to the prior art Bevan, drawn attention to the deposition of its witness. The said witness has deposed of the same teaching use of multi beam antennas and disclosing coverage area of sector antenna overlapping coverage areas of neighbouring sector antennas. Attention has also been invited to the deposition of the witness of the plaintiff in defence to the Counter Claim, of the said prior art being concerned with need and solution for increasing subscriber capacity and of replacing the existing cell sites to increase network capacity. It is further the argument of the defendant no.1/counter claimant that the said prior art is also found to support asymmetry. The defence of the plaintiff thereto is, that the witness of the defendant has not deposed of asymmetry and asymmetry cannot be deduced from the language thereof. I have similarly perused the written arguments and the depositions and the cross-examinations of the witnesses referred to therein and I am afraid, therefrom I am unable to find any conclusive proof of obviousness, applying the test of the person skilled in the art. Thus, the grounds of revocation under Section 64(e) and (f) are not made out.*
>
> *41. I therefore answer issue no.(i) as under:*
>
> *(i) Whether the impugned Patent No.IN240893 is*

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> *invalid in view of any of the grounds raised in counterclaim No.38/2012? OPCC*
>
> *by answering in the affirmative, in favour of the defendant no.1/counter claimant and by holding the Patent No. IN 240893 to be invalid and liable to revocation under Section 64(h) & (k) of the Patents Act, 1970."*

9. The said decision of the ld. Single Judge was subject matter of appeal in ***RFA(OS)(COMM)-6/2021*** titled ***Communication Components Antenna Inc. v. Mobi Antenna Technologies***, wherein the Division Bench set aside the revocation of the patent and remanded the matter on the additional issue regarding invalidation under Section 64(1) (h) and (k) of the Act. Vide the final judgment dated 4th February, 2022 in said suit *viz.* ***CS (COMM) 977/2016***, which was an *ex parte* judgment, the ld. Single Judge held that no pleadings in respect of Section 64(1)(h) and (k) having been filed and no evidence having been led in respect of these two grounds, the court cannot conclusively hold that IN'893 is insufficiently disclosed. Accordingly, the said two additional issues were decided in favour of the Plaintiff and the suit patent was upheld. The relevant portion reads as under:

> *"14. In view of the foregoing, the Court is of the view that since the additional issue was premised on a question of fact, it was necessary for the Defendant to make a specific pleading to that effect and lead evidence in support thereof. In the absence of such pleadings and no evidence having been led in this case, this Court cannot conclusively hold that IN240893 is insufficiently disclosed. Therefore, the issue has to be answered in favour of the Plaintiff, and against the Defendant."*

10. The position as it stands today, therefore, is that the Patent has gone through several layers of challenges both at the interim stage and at the final

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stage. The issues in the present suit are yet to be framed. There are various applications which have been filed by both the parties.

11. The Defendant seeks variation of the order dated 12th July, 2019. It is the submission of Mr. Sethi, ld. Senior Counsel appearing for the defendant, that the reason behind asking the Defendant to furnish bank guarantee and deposit of 10% sales vide judgment dated 12th July, 2019, was that the Defendants did not have any assets in India. He also submits that a substantial sum of over Rs.70 crores already stands deposited with this Court. Accordingly, he submits that the condition for deposit of 10% on all continuous sales ought to be varied or modified in as much as the Defendants now have unencumbered assets worth Rs. 150 crores in India.

12. On the other hand, the Plaintiff has also filed applications for further disclosure of sales in respect of certain models of antenna and also filed an interim injunction application seeking inclusion of another model of Antenna in the present suit on the ground that the same is infringing in nature.

13. This Court is of the opinion that the suit was filed way back in 2018 and sufficient rounds of litigation have taken place both in respect of the suit patent and in respect of the interim arrangements which were passed in this matter. Thus, in order to expeditiously dispose of the suit and keeping in mind the previous developments that have already taken place, this Court feels that the suit is ripe for trial on some issues which arise and may be outstanding for adjudication. The adjudication of further applications either for extension of injunction for further models or for varying the interim arrangement would lead to further delays in the adjudication of this suit. The spirit of the ***Delhi High Court Intellectual Property Division Rules, 2022*** as

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also the ***High Court of Delhi Rules Governing Patent Suits, 2022*** is for final adjudication of the patent suits and not continuous expending of judicial time over interim applications. The following three further factors also make the Court inclined to take this view:

i. On the question of invalidity there has been a complete trial which has already been upheld on most of the grounds including Novelty and inventive step. The Single Judge and the Division Bench have taken a view in the matter in respect of this very suit patent.

ii. Insofar as the interim arrangement in the present suit is concerned, the same has also gone through two rounds of litigation from two orders of the Single Judge and two appeals and one SLP before the Supreme Court.

iii. The issues that may be outstanding for adjudication are very few in number.

14. In view of these factors and events recorded above, it is deemed appropriate to dispose of some of the applications in the following manner and put the suit for trial.

I.A. 10683/2019 and I.A. 16289/2019

15. In these two applications, the Plaintiff seeks disclosure of sales turnover of antenna model XXDGL-15-33i-iVT-DB-4P in India. Leaving open the questions as to whether the said models of the Defendant are infringing the suit patent or not and the question as to whether they are the subject matter of the present suit at all, the Defendant is directed to file the sales turnover in respect of the said models before this Court in a sealed cover. The same shall be retained for being perused at the final stage of

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adjudication.

16. These two applications are disposed of.

I.A. 13481/2019 (u/O XXXIX Rule 1 and 2 CPC)

17. Vide this application, the Plaintiff seeks extension of the interim order passed by the Court on 12th July 2019 to model number-XXDWH-19-33ie-VT-DB-8P. In view of the fact that the suit is being put to trial, leaving open the right of the Plaintiff to establish that the said model is an infringing model at trial, it is directed that the sales turnover relating to this model shall be filed by the Defendant in a sealed cover before this Court.

18. List this application for hearing on 29th March, 2022.

I.A. 16288/2019 (u/O XXXIX Rule 2A)

19. This is an application which has been filed by the Plaintiff seeking attachment of the property of the Defendant *inter alia* on the ground that the Defendant is not making proper disclosure of the sales since the passing of the orders dated 31st October 2019 by this Court. Mr. Sandeep Sethi, ld. Senior Counsel for the Defendant submits that proper affidavit along with the disclosure of the sales has been made to the Court in a sealed cover. Since the Plaintiff is a competitor, the Defendant does not wish to disclose the customers' names, etc. to the Plaintiff.

20. In the opinion of this Court, this would not be a subject matter of contempt inasmuch as if there is any disclosure to be made to the Plaintiff, the same shall be considered by the Court after a chart is filed by the Defendant disclosing the actual sales, and the total quantum of the antenna made along with model numbers. Let a chart to this effect be placed before the Court on the next date. The Court would pass appropriate orders after perusing the said chart.

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21. Application is disposed of.

I.A. 13482/2019 [u/O XXV Rule 1(1)]

21. This is an application on behalf of the Defendants under Order XXV Rule 1(1) CPC seeking directions to the Plaintiff to furnish security to the tune of Rs. 8 crores for all the costs which the Defendant is incurring as the Defendant is a foreign company having no assets in India.

22. The Defendants may produce their statement of costs in terms of Order XXV Rule 1 CPC on the next date of hearing.

23. Parties to argue this application on 29th March, 2022.

I.A. 1973/2020 (for exemption)

24. Allowed, subject to all just exceptions. Application is disposed of.

I.A.1974/2020 (u/O XI Rule 1 and 4 CPC)

25. The ld. counsel for the Defendant does not wish to file any further additional documents in support of the counter claim.

26. The application is disposed of.

I.A. 10917/2021 [u/O XXXIX Rule 4 CPC]
I.A. 13481/2019 (u/O XXXIX Rule 1 and 2 CPC)
I.A. 13482/2019 [u/O XXV Rule 1(1) CPC]

27. List these applications for hearing on 29th March, 2022.

28. Parties to also bring proposed issues which are outstanding for adjudication, on the next date of hearing. Parties may also seek instructions as to the experts from their side who would be tendering evidence in this matter in support of the plea of infringement, invalidity and damages.

29. List on 29th March, 2022.

PRATHIBA M. SINGH, J.

MARCH 10, 2022/*Rahul/SK*