IN THE HIGH COURT OF ANDHRA PRADESH

DATED: 13.10.1961

CORAM

THE HONOURABLE MR. JUSTICE SATYANARAYANA RAJU

A.S. Nos. 140, 154 and 170 of 1957

The Indian Hume Pipe Co., Ltd. ... Appellant

Vs.

Vendra Venkanna, Proprietor of Jai Bharathi Cement Works ... Respondents and others

JUDGMENT

Satyanarayana Raju, J.

1. The Indian Hume Pipe Co., Ltd., is the appellant in all these appeals. The appeals are presented against common judgment of the Court of the District Judge, West Godavari at Eluru in O.S. Nos. 30, 53 and 54 of 1954 which were all instituted by the appellant herein as the plaintiff against various defendants. The suits were instituted claiming reliefs for an alleged infringement of the trade mark of the plaintiff in relation to cement concrete pipes manufactured and sold by the plaintiff and of the patent registered in relation to the said cement concrete pipes.

2. The plaintiff's case in brief is that it is a long standing manufacturer and seller of cement concrete pipes under the trade mark and name "Hume Pipes" and "Humeogenous Pipes". The said pipes manufactured by it acquired reputation in India and other countries. The Company had registered the said trade marks with the Registrar of Trade Marks under the Trade Marks Act of 1940 (Act V of 1940) as Nos. 1313 and 1317 on 24-6-1942. The registration was for a period of 7

years in the first instance and renewal thereof was obtained for a further period of 15 years.

The plaintiff-company is therefore the registered proprietor of the said trade mark. The plaintiff-company had also registered its patent in relation to the said cement pipes as an invention in or relating to cages or drums for forming thereon reinforcement of concrete pipes as patent No. 20709 on 19-3-1934 under the Patents and Designs Act of 1911 (Act II of 1911). By virtue of the said patent, the plaintiff has the sole and exclusive rights in the use and manufacture of the machine and method which was so registered. The said patent is valid and subsisting. While so, the plaintiff alleged that the various defendants, who are manufacturers of cement concrete pipes, had infringed the rights of the plaintiff by manufacturing and selling cement concrete pipes under the plaintiff's trade mark and name and using the patented machine and method for manufacturing the said cement pipes.

3. The defendant in O.S. No. 30 of 1954 is one Vendra Venkanna, Proprietor of Jai Bharathi Cement Works, Penugonda, West Godavari District. The plaintiff alleged against him that he had infringed the plaintiff's rights deliberately and wilfully and was passing off his cement concrete pipes as those of the plaintiff making the public to believe that his goods of inferior quality were the genuine goods of the plaintiff and that the plaintiff came to know of the said infringement in or about July 1953 whereupon by notice dated 16-10-1953 the plaintiff called upon the defendant to desist from infringement. The defendant replied expressing ignorance of the plaintiff's rights and professing to desist from the using the plaintiff's trade mark for his goods.

The plaintiff, however, understood that he was still publishing advertisements etc., offering his goods as "Hume Pipes" and "Humeogenous Pipes". Since the defendant began to market his products, the sales of the plaintiff had fallen and orders from Municipalities, Corporations and other Public bodies had been obtained by the defendant. The plaintiff had suffered damage. The plaintiff

therefore claimed damages estimated at Rs. 10,000/- for the loss suffered by the diminution in the plaintiff's sales by reason of the defendant's marketing his goods under the plaintiff's trade mark. The plaintiff further claimed a sum of Rs. 9,000/- as damages for the infringement of the patent. Further to the relief of damages, the plaintiff prayed for an injunction restraining the defendant from infringing the plaintiff's trade mark and patent. The plaintiff also prayed for the reliefs of delivery or destruction of the goods made in infringement of the patent, for an account to be taken of the profits made by the defendant by the sale of the goods infringing the plaintiffs trade mark and for an enquiry into the profits so made.

4. The defendant pleaded that he was not aware of the trade mark and the patent registered by the plaintiff and denied the allegation that he has passed off his goods as those of the plaintiff and caused loss to the plaintiff. He pleaded that he was manufacturing and selling R.C.C. pipes since a long time and that in the course of the trade, R.C.C. pipes were referred to as "Hume Pipes". The words "Hume and Humeogenous" were only descriptive of R.C.C. Pipes. Until he received the plaintiff's notice, he was not aware of the registration of the trade mark; and thereafter he did not use the mark registered by the plaintiff. He was not liable for the damages claimed. He pleaded further that he was unaware of the patent registered by the plaintiff. The cages and drums used by the defendant were of his own design and make. Further, the preparation of cages for preparing cement pipes does not involve any inventive step having regard to the simple pro- cess involved in the preparation of cages. The defendant is entitled to claim a revocation of the patent registered by the plaintiff. The cages have been in use by the manufacturers of cement pipes to the knowledge of the plaintiff for the several years past. He was not liable for the damages claimed. The plaintiff was not also entitled to the other reliefs claimed by him.

5. The defendant in O.S. 53 of 1954 is the National Cement Pipes Ltd., Bhimavaram, West Godavari District said to be carrying on business in cement pipes and ferro concrete articles at Bhimavaram. The plaintiff claimed damages

estimated at Rs. 9,000/- for an alleged infringement of the plaintiff's patent alleging that the defendant erected and used the machines covered by the said patent in their factory at Bhimavaram and offered for sale in the normal course of business concrete pipes including cages made in accordance with the said patent method. Further thereto, the plaintiff claimed an injunction against further manufacture by the patented process and the other reliefs as were claimed against the defendant in O.S. No. 30 of 1954.

6. The defence set up is the same as the defence set up by the defendant in O.S. 30 of 1954. Further, it was pleaded that during the two years prior to the institution of the suit, the plaintiff was negotiating for the purchase of the defendant-concern and sent his engineers and got the property and machinery valued. The plaintiff and its engineers never complained that the defendant had infringed the patent rights of the plaintiff.

7. The defendants in O.S. 54 of 1954 are the firm, Sri Radhakrishna Reinforced Cement Pipe and Ferro Concrete Works, Palakole, West Godavari District (Ist defendant) and its partners impleaded as defendants 2 to 5. The plaintiff claimed damages estimated at Rs. 9,000/- for an alleged infringement of the patent. The other reliefs as claimed against the defendant in O.S. 53 of 1954 were also claimed against these defendants.

8. The defendants repudiated the allegations of infringement and pleaded that there was no novelty in the cages and drums for preparing cement pipes which had been in common use in the East and West Godavari Districts. They pleaded further that they were not aware of the existence of the alleged patent and that the defendants had been manufacturing pipes for about 25 years openly and to the knowledge of the public and of the plaintiff. They denied the plaintiff's rights to the reliefs prayed for.

9. The three suits were clubbed together as involving common matters for decision and evidence was adduced in O.S. 30 of 1954 by consent.

10. On the main issues as to the alleged infringement of the trade mark and the patent, the learned Additional District Judge's findings were these:

(1) The plaintiff-company is the registered proprietor of the trade marks 'Hume Pipes' and 'Humeogenous Pipes' and the patents relating to their manufacture;

(2) The defendant in O.S. 30 of 1954, Vendra Venkanna, Proprietor of Jai Bharathi Cement Works, Pcnugonda infringed the trade mark rights of the plaintiff-company and was liable for the infringement thereof.

(3) The plaintiff-company was the Proprietor of the Indian Patent No. 20709 dated 19-3-1934 relating to the cages or drums for the manufacture of concrete pipes; but the said patent was not subsisting on the date of the suit. The said patent did not involve an inventive step in the machinery and as long as the patent was not revoked, the use of similar machinery constituted technical infringement of the patent.

11. With regard to the reliefs prayed for, the findings were:-- The plaintiff-company was entitled to recover only nominal damages for infringement of their trade mark, awarded at Rs. 100/-. The plaintiff company also was entitled to an injunction restraining the defendant in O.S. 30 of 1954, Vendra Venkanna, Proprietor of Jai Bharathi Cement Works, from using the trade mark of the plaintiff for the cement concrete of his make. The plaintiff-company was not entitled to any reliefs with regard to the alleged infringement of its patent as the patent had expired even before the filing of the suit.

12. It would appear that the plaintiff had given up the relief for accounts and restricted its claim to damages.

13. In the result, the suit O.S. 30 of 1954 against Vendra Venkanna, Proprietor of Jai Bharathi Cement Works, was decreed, granting a permanent injunction restraining the defendant from using the trade marks of the plaintiffs in future and awarding Rs. 100/- as damages and proportionate costs so far as the relief of injunction was granted.

14. O.S. Nos. 53 and 54 of 1954 were dismissed but without costs.

15. The present appeals are preferred by the plaintiff against the judgment of the Court below.

16. The defendant in O.S. No. 30 of 1954 has preferred cross-objections against the judgment granting an injunction. The defendants in O.S. 54 of 1954 have, preferred cross-objections in so far as costs were disallowed to them while dismissing the suit against them.

17. The learned counsel for the appellant has urged two points before us: Firstly that the Court below has erroneously held that the patent was not in force on the date of the plaints; that the patent did not involve any inventive step and that the plaintiff would get no relief by way of damages; and secondly, that the court below has erred in awarding only nominal damages when the question of ascertaining the quantum of damages was left open for investigation by a Commissioner and report. We would now address ourselves to those points.

18. Ex. A-55 dated 29-7-1935 is the certificate of patent No. 20709 issued to the plaintiff-company under the authority of the Government of India and it shows that the patent was registered on 19-3-1934, Ex. A.56 appended thereto shows the details of the machines, which were pa- tented by the plaintiff. The patent relates to the cages or drums for forming thereon reinforcements for concrete pipes. The patentees had the exclusive privilege of making, selling and using the invention throughout British India and of authorising others so to do for a period of 16 years from 19-3-1934 subject to the condition that the validity of the patent was not guaranteed and also that the fees prescribed for the continuation thereof was duly paid. The patent according to the certificate, was due to expire on 19-3-1950.

19. Ex. A.71 is the certificate issued to the plaintiff on 10-10-1952 which is to the effect that by virtue of Ordinance No. 26 of 1948 published in the Gazette of India Extra-ordinary dated, 1-10-1948, the term limited in the patent No. 20700

for the duration thereof shall be 21 years from the date of the patent, viz., 19-3-1934.

20. Ex. B.44 dated 21-12-1955 is a letter from the Government of India, Patent Office, to the effect that the petition for the extension of the term of patent No. 20769 has been rejected by the Central Government.

21. It would appear that it was conceded before the Court below that in view of Ex. B.44 the plaintiff was not thereafter entitled to an injunction in respect of the patent. The plaintiff, however, purported to claim damages for the period prior to the expiry of Ex. B.44 dated 21-12-1955.

22. The learned trial Judge has rejected the claim of the plaintiff for damages on various grounds that the defendants were not aware of the existence of the patent and further had no reasonably means of making themselves aware of such existence, that the patent did not involve any inventive step and further that the patent was not in force on the date of the suit.

23. The relevant provisions of the Patents and Designs Act 1911 (Act II of 1911) in so far as they are relevant may be appropriately get out:

> "Section 12 (1). A Patent sealed with the seal of the patent office shall, subject to the other provisions of this Act, confer on the patentee the exclusive privilege of making, selling and using the invention throughout India and of authorising others to do so.
>
> Section 29 (1). A patentee may institute a suit in a District Court having jurisdiction to try the suit against any person who, during the continuance of a patent acquired by him under this Act in respect of an invention, makes, sells or uses the invention without his licence, or counterfeits it, or imitates it:
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> xx xx x (2) Every ground on which a patent may be revoked under section 26 shall be available by way of defence to a suit for infringement.
>
> Section 26 (1). Revocation of a patent in whole or in part may be obtained on petition to or on counter-claim in a suit for infringement before a High Court on all or any of the following grounds, namely: - xx xx x (e) that the invention does not involve any inventive step, having regard to what was known or used prior to the date of the patent;

> Section 30. A patentee shall not be entitled to recover any damages in respect of any infringement of a patent granted after the commencement of this Act from any defendant who proves that at the date of the infringement he was not aware nor had reasonable means of making himself aware of the existence of the patent, and the marking of an article with the word "patent" "patented", or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent;
>
> Provided that nothing in this section shall affect any proceedings for an injunction."

24. A combined reading of these provisions would show that a patentee has a right of action to restrain the infringement of a patent during the continuance of the patent only, that among other things, the validity of the patent could be raised by way of defence and that when damages are claimed in respect of infringement, the action could be successfully resisted on the ground that the defendant was not aware of the patent or had no reasonable means of making himself aware of the existence of the patent. It may also be noticed in this context that where the validity of the patent is questioned, Section 33 of the Act provides for the transmission of such Court's decree and order to the Controller who will cause entry thereof to be made in the register of patents.

25. In the instant case the plaintiff would appear to have restricted his claim to damages only, in view of the fact that the patent was not extended (vide Ex. B.44 dated 21-12-1955). The learned District Judge has found that the patent expired even before the filing of the suit. In the said circumstances, we are of the view that the claim of the plaintiff for damages could be effectively considered with reference to the plea that the defendants were not aware of the existence of the patent on the assumption that the patent had not expired on the date of the institution of the suit. Section 30 of the Act, set out supra, is clear that the defendant has to prove that on the date of the infringement, he was not aware of the existence of the patent, nor had he reasonable means of making himself

aware of the existence of such patent. Our present enquiry will be if the defendant has proved this fact as found by the lower court.

26. The plea of the defendants that they were utterly ignorant of the patent and had no means of knowing the existence of such patent, in our view, has been rightly accepted. That would mean that the defendants have made good their plea with reference to section 30 of the Patents and Designs Act, 1911, which effectively precludes the claim of the plaintiff for damages.

27. The first point raised by the plaintiff-appellant is therefore found against.

28. The second point that the Court below has erred in awarding only nominal damages for the infringement of the trade mark when the question of ascertaining the quantum of damages was left open for investigation by a Commissioner and report, commends itself to us. But, before we decide this matter, we would dispose of the cross-objections filed by the defendant in O.S. No. 30 of 1954, the Proprietor of Jai Bharathi Cement Works, Penugonda, impugning the finding of the Court below that the defendant had infringed the trade mark of the plaintiff-company.

29. Sri Rajeswararao has contended that "Hume Pipes arc commonly understood in the market as merely reinforced cement concrete pipes of any make, that the defendant has been receiving orders for the supply of his pipes from all departments of the Government and Municipalities under the said denomination and that it could not, therefore, be held that the defendant had infringed the trade mark of the plaintiff in relation to the R.C.C. pipes manufactured by him and that as such the plaintiff is entitled to an injunction restraining him from marketing his commodity under the said name "Hume Pipes and Humeogenous Pipes."

30. It is seen that the defendant has pleaded thus in para 5 of his written statement :

> "The defendant used the words "Jai Bharathi Hume Pipes" in the price list and in the pamphlet issued by him in April 1952 in complete ignorance that the plaintiff obtained registration of the words "Hume" and "Humeogenous". The defendant did not intend to infringe any of the plaintiff's rights nor was he aware that any such rights were being infringed. In his reply dated 2-11-1953, the defendant clearly stated so, and also mentioned that be was prepared in the interests of cordial business relations to avoid the use of these words. Since then he did not use these words and the allegations in the plaint to the contrary are not true. Without prejudice to his other contentions this defendant submits that after receiving plaintiff's notice dated 16-10-1953, he did not use these words and he will not hereafter use them."

That would show that the defendant pleaded ignorance of the registration of the trade mark of the plaintiff and that he discontinued the use thereof after the receipt of the plaintiff's notice dated 16-10-1953, the original of Ex. A.64 and undertook not to use the said trade mark thereafter.

31. The provisions of the Trade Marks Act to which we shall presently refer do not seem to admit of a plea that the defendant had used the trade mark unaware of the fact of its registration. Further, we are unable to accede to the contention that in the market R.C.C. pipes of any make are referred to as Hume Pipes and that the use of the name "Hume Pipes" in relation to the R.C. C. pipes manufactured by the defendant did not constitute' an infringement. We would presently point out that the evidence led by the defendant also supports this view, The plaintiff had led evidence positively to the contrary.

32. Section 21 of the Trade Marks Act indicates the right conferred by the registration and it is in these terms:

> "Section 21 (1). Subject to the provisions of sections 22, 25 and 26, the registration of a person in the register as proprietor of a trade mark in respect of any goods shall give to that person the exclusive right to the use of the trade mark in relation to those goods and, without prejudice to the generality of the foregoing provision, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of

> trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark, likely to be taken either - (a) as being use as a trade mark; or (b) to import a reference to some person having the right either as a proprietor or as registered user to use the trade mark or to goods with which such a person as aforesaid is connected in the course of trade."

The obvious words of this provision do not admit of the answer that the defendant did not know the registration of the trade mark and so he has infringed. We would now refer to the evidence in the case which is destructive of this plea.

33. It has been elicited thug in the cross-examination of D.W. 3:

> "I know that "Hume" is the trade mark. I know that none should use that word "Hume" ..... I know that the word 'Hume' was the trade mark from 1942".

This witness is the Managing Director of the Defendant Company in O.S. 53 of 1954 and his evidence obviously belies the plea that in the market "Hume Pipes" are only descriptive of the composition of the material for the pipes and that 'Hume-Pipes' are equivalent to reinforced cement concrete pipes.

34. D.W. 6 is the defendant in O.S. 30 of 1954. He stated that after the receipt of the plaintiff's notice, he had ceased advertising in the way in which he did in" Ex. A.62, and further stated thus:

> "We did not ask the Municipalities or Panchayat Boards what Hume Pipes the difference between R.C.C. Hume Pipes, cement pipes, etc., (sic). There is no difference between one kind and the other kind. I always take them like the same, though they were called in different names. I never attempted to know why some called the pipes as Hume Pipes."

We cannot take these assertions as true. They are manifestly self-serving.

35. The plaintiff has led definite evidence to the contrary. P.W. 4 an Engineer of the Plaintiff-company, deposed that in 1942 the plaintiff-company registered the names 'Hume Pipes and Humeogenous Pipes' under the Indian Trade Marks Act. Exs. A.53 and A-54 are the certificates of registration. The registration was being renewed from time to time and the latest renewal would expire in June 1963.

Hume Pipes and Humeogenous Pipes acquired a reputation for their quality and they (Hume and Humeogenous Pipes) were not, on account of the trade usage, associated with R.C.C. Pipes. He repudiated that R.C.C. pipes are called R.C.C. Hume Pipes.

36. P.W. 5 is also an Engineer of the plaintiff-company. He referred to the registration of the trade marks and the renewals under Exs. A.59 and A-60. He referred to the advertisement made by the defendant in O.S. 30 of 1954 Ex. A-62 and the printed copy of the price list of the said defendant, Ex. A-63. He stated that in about 1953 he came to know that the defendant in O.S. No. 30 of 1054 infringed the trade mark. The plaintiff sustained loss on account of the infringement. Some of the customers of the plaintiff-company had placed orders with the defendant-company and purchased the pipes from them with the result that they had incurred loss of business. He repudiated that in trade usage all R.C.C. pipes are called R.C.C. Hume Pipes.

37. Sri Rajeswara Rao has tried to labour a point that Hume Pipes are a synonym for R.C.C. pipes by reason of the indents placed with the defendant-company for the supply of R.C.C. pipes. He referred to the indents and letters for the supply of R.C.C. Hume pipes or Jai Bharat Hume pipes or Hume pipes, true copies of which were exhibited as Exs. A.39, A.35, A.13, A.33, B.14, B.16, B.18, A.34, B.17, B.19, B.50, B.20 and B.51. We do not consider that these make out a plea that Hume pipes are a synonym for R.C.C. pipes in the market.

38. We notice here that the Jai Bharat Cement Works has been using a letter head which is printed thus: (Ex. A.33) "Jai Bharati Cement Works".

Spun R. C. C. Products : Hume Pipes, reinforced concrete pipes and specials etc. Proprietor : V. Venkanna, Pipes from 3" to 6" dia. for water supply drainage, culverts, well sinking etc. To the same effect is Ex. A.34.

39. When the Jai Bharati Cement Works has described itself as suppliers of the pipes described as above, the indents for the supply of Hume pipes is intelligible.

It is the evidence of P.W. 5 that they had no objection if any one purchased their pipes and sold them to others who placed orders with them. It is not the case of the defendant that he is a stockist of the plaintiff's pipes and supplied them. The persons, who placed indents with them, might have placed indents for Hume pipes under a misapprehension. We therefore reject this plea as unsound in law and untrue in fact.

40. There can be no doubt that the use of the word "Hume Pipes" in relation to R.C.C. pipes manufactured and sold by the defendant, constituted an infringement of the trade mark.

41. The question of infringement must be answered to the plaintiff's trade mark as a whole and not to particular parts of it. Vide Subbiah Nadar v. Kumaraval Nadar, AIR 1946 PC 109.

42. The pleas raised in the cross-objections are therefore to be negatived. We affirm the finding of the learned District Judge that there was an infringement of the plaintiff's trade mark.

43. This would now take us on to the question of the measure of damages. The learned District Judge, dealing with the question has observed thus in para 27 of the judgment:

> "The question of determination of actual damages was left open to be determined by a commissioner that might be appointed in this case if need be and if it is found that the plaintiffs are entitled to recover any damages on account of the alleged loss ..... Though evidence was not adduced with regard to the quantum because of permission to reserve such a right, at least he ought to have shown to the Court that there was a fall in his sales after the defendant began to infringe his trade mark. No such material was placed before the Court. I, therefore, find that the plaintiffs are entitled to recover only nominal damages for infringement of their trade marks by the defendant company and I feel it reasonable to award nominal damages in a sum of Rs. 100/-."

It seems to us clear from the above that the quantum of damages was left open for ascertainment by the Commissioner and determination thereafter by the

Court. The plaintiffs claim for damages cannot, therefore, be legitimately disposed of by awarding only nominal damages.

44. "Nominal Damages" is a technical phrase which means that the Court has negatived anything like real damage, but is affirming by nominal damages that there is an infraction of a legal right, which though it gives the plaintiff no right to any real damages at all, yet gives him a right to the verdict of judgment because his legal right has been infringed. Vide Mediana v. Comet The Mediena, 1900 AC 113 at p. 116 cited Mayne on Damages-11th Edition at page 3.

45. "Substantial damages" on the contrary are those damages which a plaintiff with a good cause of action, is entitled to receive as a fair and adequate compensation for the damage he has suffered from the wrongful act of the defendant. The principle of restitutio in integrum is more faithfully adhered to. The Court will endeavour to get that sum of money which will put the party who has been injured in the same position in which he would have been but for the wrongful act of the defendant.

46. In view, of the substantial difference between the nominal and substantial damages, the award of nominal damages only is clearly an error.

47. The damages in an action for infringement of trade mark are in proportion to the injury done. Vide Swadeshi Mills Co., Ltd. v. Juggilal Kamlapat Cotton Spinning and Weaving Mills Co., Ltd., AIR 1927 All 81. But, as the Privy Council has observed in Juggilal Kamlapat Cotton Spinning and Weaving Mills Co., Ltd. v. Swadeshi Mills Co., Ltd., AIR 1929 PC 11, there is no cut and dried rule which can be laid down by a Court of law in estimating damages for infringement of trade mark.

48. This is a matter to be gone into more fully upon evidence and the parties did reserve it that way. In fact, D.W. 6 stated that he had accounts with him which he was ready to put into Court. This was evidently not done on account of the reservation of the right for the ascertainment of damages by a Commissioner,

49. We would, therefore, remit the said matter for adjudication by the Court after a Commissioner is appointed to investigate about the measure of damages and submit a report to the Court.

50. We affirm the injunction against the infringement of the trade mark of the plaintiff in future.

A.S. 140 of 1957 is, therefore allowed to this extent only viz., the judgment awarding nominal damages of Rs. 100/- is set aside and the matter is remitted to the lower Court for disposal on the lines indicated. The judgment and decree in respect of the relief of injunction is affirmed.

51. Cross-objections in A.S. No. 170 of 1937 relate to costs in O.S. 54 of 1954. It has been noticed that O.S. 54 of 1954 claiming damages for alleged breach of patent was dismissed but with costs. Sri Venkatesam argued that costs should follow the event.

52. The trial Court had observed that there was a technical infringement of the patent, but that the defendants had no reasonable means of knowing the patent of the plaintiff. We have held that the plaintiff could not claim damages as the plea of the defendant that he was not aware of the patent or had no reasonable means of being aware of such a patent, was accepted, though the plaintiff had shown that it had patented its machines. Under the circumstances, we do not consider that we should interfere with the discretion of the trial Court in disallowing costs.

53. In the result, the cross-objections filed in A.S. Nos. 140 and 170 of 1957 are dismissed; but we make no order as to costs. A.S. 154 and 170 of 1957 are dismissed, but we do not propose any order as to costs. A.S. 140 of 1957 is allowed to the extent indicated above. The costs of this appeal will abide the result.

54. These cases having been set down for being mentioned this day, the Court made the following order:

The appellant will be entitled to a refund of court-fee on the amount of Rs. 10,000/-.