

Telemecanique & Controls (I) Limited vs Schneider Electric Industries Sa on 7 November, 2001

Equivalent citations: 94(2001)DLT865

Author: Sanjay Kishan Kaul

Bench: Sanjay Kishan Kaul

JUDGMENT

Sanjay Kishan Kaul, J.

1. The souring of relationship between joint venture partner's has given rise to the present dispute where the respondent is aggrieved by the alleged infringement of its patents by the appellant. A suit was thus filed by the respondent herein against the appellant for mandatory injunction from manufacturing and advertising as its own and selling the products of respondent, for which respondent has registered patents and design, in India or any where in the world for the product range of electric contractors and accessories known as the D2 range. The present appeal arises from the impugned order dated 27.11.2000 of the learned Single Judge allowing interim application of the respondent IA No. 8522/99 under order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 and the order dated 27.11.2000 dismissing IA No. 6504/2000 filed by the appellant after the judgment had been reserved by the learned Single Judge on the injunction application.

2. It is appropriate to observe at this stage before considering the rival contentions advanced on behalf of learned counsel for the parties that this appeal has to be decided within the parameters laid down by the Supreme Court in the case of Wander Limited and Anr. v. Antox India P. Ltd. 1990 (Supp) SCC 727. Thus in terms of the said decision this court will not interfere with the exercise of the discretion of the court of first instance, which is the order of learned Single Judge, and substitute its own discretion except where the discretion is shown to have been exercised arbitrarily or capricious or perversely or where a court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. This court has also not to reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material placed before it. There mere fact that this court may have reached to a contrary conclusion at the trial stage would not be thus good ground to interfere with the order of the learned Single Judge if the discretion has been exercised by the learned Single Judge reasonably and in a judicial manner. The fact that the appellate court would have taken a different view has been held by the Supreme Court not to justify interference with the trial courts exercise of jurisdiction. We have observed these principles at the inception because even at this

stage of challenge to the interlocutory order elaborate arguments have been advanced both on law and on appreciation of the material placed before the learned Single Judge. In fact the learned Single Judge has also noticed that though the matter in controversy was at the interlocutory stage, considerable material has been placed and lengthy arguments advanced even before the learned Single Judge.

3. The beginning of the relationship between the parties was in 1983 when a French company known as La Telemecanique Electric (hereinafter referred to as LTE) entered into a joint venture agreement with an Indian Party for establishing a joint venture company for manufacturing certain contactors relays and add-on units in India. This joint venture gave rise to the incorporation of the appellant company in 1984 with 38% of the shareholding in the said company held by LTE. In development of this relationship between the parties, several agreements were executed including an agreement for supply of technical information and an agreement for technical services. Both these agreements were executed on 28.11.84. The Government also granted permission to this collaboration agreement. These agreements were to remain in force for a period of 8 years from the date they were taken on record and thus the technical services agreement is stated to have come to an end on 28.2.93.

4. The locus of the respondent, which is stated to be originally known as Schneider Electric SA, is the transfer of rights of LTE in March, 1984 to the said Schneider Electric, SA including rights for patents and design. It is further stated that subsequently LTE merged into the holding company of the respondent which merger was approved on 9.6.97.

5. The genus of the controversy between the parties arises from the fact that the technical services agreement is stated to be respect of the products know as D1 range having contactors as set out in the said agreement. The respondent was aggrieved in respect of manufacture and sale of D2 range of contractors and other products by the appellant which according to the respondent did not form a part of the technical services agreement but was a new invention and had not been offered to the appellant. This D2 range is claimed to have been sold in India directly by the respondent through its Indian subsidiaries under the name of Telemecanique. The respondent was aggrieved because of the manufacture and marketing of similar products to D2 range of the respondent by the appellant. The rival contention advanced on behalf of the appellant in their written statement was that D2 range of products is nothing but an improvement or modification of the D1 range of products and the respondent was bound to give to the appellant improvements and modifications relating to the D1 range of products in terms of the technical services agreement dated 28.11.84. It was also stated that internationally this range of product was not called the D2 range of products and the said label had been assigned only in India by the respondent so as to avoid its obligations under the technical information agreement and technical services agreement. It is also the appellant's case that the appellant company alone was authorised to sell the products in India and subject to some restrictions could even sell the products in other parts in the world. The appellant claims that they proceeded with the manufacture and marketing of these products with tacit consent of the representatives of the respondent on the board of respondent company. The appellants claims to have spent Rs. 4 crores for development and research and development of D2 range of products.

6. The learned Single Judge has set out succinctly the points in issue raised and pleaded in the application to be decided as under:-

- "a) The plaintiff does not have the locus standi to institute the present proceedings.
- b) The design registrations relied upon in the plaint have lapsed.
- c) Functional shapes or mechanical devices cannot be the subject matter of design registration.
- d) The patents are invalid as the patented features are in the nature of obvious improvements.
- e) The plaintiff's case is hit by acquiescence, estoppel, delay and laches.
- f) The defendant has spent Rs. Four crores on the development of improved and allegedly infringing range of products.
- g) The court must lift the corporate veil and look at who are the real partners of the joint venture."

7. In view of the aforesaid points having been culled out by the learned Single Judge as matters in controversy between the parties and the learned Single Judge having proceeded to determine the same, it would be appropriate that in the present judgment also we proceed to consider to consider the findings of the learned Single Judge and the challenge to the same for disposing of the appeal.

8. There have been extremely lengthy arguments advanced on the issue of locus standi of the respondent to institute the suit. Charts have been filed before us in the appeal to show that inconsistent stand have been taken by the respondent to establish its locus standi to file the suit and it is thus claimed that apart from the fact that respondent has failed to establish its right to sue, the concealment of material fact and the inconsistent stand of the respondent itself should disentitle the respondent to any relief in the present proceedings.

9. This contentious issue arises out of the fact the original true proprietor of the designs was LTE and it is claimed that on 8.10.99 LTE merely filed the request for recording the change of the name from LTE to the name of respondent which is after filing of the present suit. Thus the appellant has contended that the title could not have been passed since the LTE had failed to apply within the prescribed period of 6 months from the recordal date of the deed of assignment dated 28.3.94 in terms of Section 68 of the Patents Act, 1970 and Rule 73 of the Patent Rules, 1972 framed there under. The scope of this controversy was further extended by the subsequent application IA 6504/2000 filed by the appellant alleging suppression of material documents and facts by the respondent. This plea arose out of the claim of the appellant that the agreement to confirm dated 30.9.97 said to be between Schneider Electric, SA and the respondent and the deed of assignment dated 23.8.99 are fabricated and sham documents. The agreement to confirm dated 30.9.97 is

alleged to neither field nor mentioned in the plaint in the present suit. This position is disputed by the respondent claiming that this very document was not filed as the contract of contribution was already filed and it was not though fit to file the agreement as it was general in nature and supplemental and ancillary to the contract of contribution. These aspects were considered by the learned Single Judge in the order dated 27.11.2000 and the learned Single Judge was of the view that the matter in issue was not such as to be decided at this stage and could only be decided after the evidence had been led. Further the learned Single Judge while construing this aspect observed that it was an admitted position that as on date the respondent was a registered owner of the patent in question and that the plea of improper registration was not available to the appellant as the appellant was not claiming to be owner of the patents under Section 107 of the Patent Act. The learned Single Judge also considered the fact that such objection could only be taken by persons who claimed to be owners of invention/patent and cannot be used as a defense to the suit specially as no one else is claiming ownership of the patent in question. The learned Single Judge was of the considered view that the appellant did not fall in the category of "is person interested" within the meaning of Section 64 of the Patent Act for the appellant to challenge the same.

10. Mr. P. Chidambaram, learned senior counsel for the appellant, has drawn our attention to a chart filed along with note of arguments by the appellant and contended that there are inconsistent claims regarding ownership of patents made by the respondent before different forums. The purport of this is to show that the respondent has not come to the court with clean hands. It was thus contended by learned senior counsel for the appellant that it was a case of a litigant attempting to act smart and being caught in the process. Mr. Chidambaram, learned senior counsel for the appellant, contended that the avenue of only claiming change of address was to avoid the rigours of law in terms of other provisions because if the procedure for assignment had been followed the same would have been hit by Limitation under Section 68 of the Patents Act read with Rules 73 and 74 of The Patents Rules since no Form 16 had been filed. It was thus contended that the document of 28.3.99 was only used to bring this issue within the period of one year. It was further contended that mere assignment was not sufficient and there was requirement of registration. The chart shows the two alternative avenues and the inconsistency if any. On the other hand, Mr. Mukul Rohatgi, learned senior counsel for the respondent, has contended that though there may be some discrepancies in sum and substance the locus of the respondent had been established and if only the first channel in the chart is perused it would show that the claim of locus by the respondent was established.

11. Though considerable time was spent on rival submissions on this account alone, we are of the considered view that the learned Single Judge had rightly observed that the aspects stated therein would not prima facie disentitle the respondent to maintain the suit at this stage and at best these were matters to be gone into at the stage of trial and thus the suit could be maintained.

12. The second issue relates to the plea of lapsing of design registered on which the learned Single Judge, on appreciation of the documents in question, has observed that the renewal is making patents current up to date and thus prima facie case of the validity of the registrations are made out. We again see no reason to interfere with the factual finding of the learned Single Judge.

13. The third aspect to be considered arose out of the plea that functional shapes or mechanical devices cannot be subject matter of design registrations. Mr. Chidambaram, learned Senior counsel for the appellant, contended that the product in question has no aesthetic consideration and the products are purely functional in nature. These products are fitted in control panels and are thus claimed not visible and not having any aesthetic consideration. Reference was made in this behalf to Section 2(5) of the Designs Act, 1911 to contend that a design to defined not to include any mode or principle of construction or anything which is in substance a mere mechanical device. It is stated that the position remains the same under Designs Act, 2000 in terms of Section 2(d). This plea is being opposed by Mr. Mukul Rohatgi, learned senior counsel for the respondent contending that the respondents product, in respect of which registration design exist, has features which are all visible when they are purchased and also when they are installed in the factories. The product is thus claimed to be visible to the naked eye. This design has existed for more than 8 years not only in India but in various countries of the world and has not been challenged for such a period. It is further contended on behalf of the respondents that in view of the observations in the case of *Moody v. Tree*. 9 RPC 333 it is clear that Design Act was entitled to add to the Patents Act by making that which is not patentable the subject matter of the design.

14. The learned Single Judge has dealt with the proposition by reference to the judgments cited on behalf of the appellant *Stenor Ld v. Whitesides (Clitheroe) Ltd.* 63 RPC 81 that the Design which is not visible cannot be registered. This judgment was sought to be distinguished both before the learned Single Judge and in the arguments before us by the learned Senior counsel for the respondent on the basis that the product in the present case is visible and does not require a magnifying glass to be seen as in the facts of that case. The other judgments cited and discussed before the learned Single Judge are *AMP Incorporated v. Utilux Proprietary Ltd.* (1972) R.P.C. 103 and *Niky Tasha India P. Ltd. v. Faridabad Gas Gadgets P. Ltd.* AIR 1985 Delhi 136. While considering the aforesaid two judgments the learned Single Judge has noted the contention advanced on behalf of the respondent herein that there has been no admission of the fact that the subject matter has no artistic conception. Another important aspect is that there is no claim of prior publication or user by the appellant and the Design has existed for a period of 8 years. The learned Single Judge, therefore, in our considered view, rightly concluded that prima facie a case had not been made out at this stage of the respondents design registration being merely of functional shapes and devices. We have also been taken through the photographs on record and the contactors have also been produced before us. We are prima facie of the view that there are features in respect of the products which are visible to the eye and at this stage it cannot be stated without further scrutiny after evidence that despite the registration, the respondent should be disentitled to the benefits accruing from such registration.

15. The fourth plea considered by the learned Judge is somewhat technical in nature as it arises out of the contentions advanced on behalf of the counsel for the appellant that the patents are invalid in view of the fact that patentee features are in the nature of workshop improvements. There are two rival certificates or reports issued in this behalf relied upon by the appellant and the respondent. The first expert opinion is of Mr. Dujardin filed by the respondent herein to establish that D2 is a new range of product designed to function with and accept direct command from a computer. The opinion states that the external appearance, connections and arrangements are required to be kept

as close as possible to an earlier version of product for maximum compatibility specifically keeping in mind the requirement of replacement and maintenance when a new range of product is introduced with the object of replacing an older product. It is thus stated that though dimensions and weight are close but the difference is due to the re-design. The innovations in the range are set out in the report which are also mentioned at the internal page 13 of the judgment. The conclusion of the report is that the D2 is a brand new design and not a simple evolution or improvement over the D1 range. On the other hand, the appellant has relied upon a certificate issued by Professor Kothari to the effect that the result obtained from comparison of D1 and D2 range is that the contactors are identical. The said report states that vital components are identical though some parts have been modified and thus the contactors are really improvements or modifications and could not be termed as entirely new product.

16. Thus two rival reports have been analysed by the learned Single Judge and it has been noted by the learned Single Judge that even in the report of Professor Kothari what has been stated is that the D2 range of products cannot be termed as "entirely" new product. Thus the learned Single Judge has drawn a conclusion that even on the basis of the report of Professor Kothari there is difference between the two though it may not be an entirely new product. The matter being one of a technical nature the two reports have to be weighed and sustenance drawn from the reports to arrive at a prima facie conclusion. The learned Single Judge was of the view that in view of the two conflicting opinions it is not possible at this stage to come to the conclusion that D2 range is a mere workshop improvement. Another aspect which has been considered by the learned Single Judge, and which in our considered view, is important, is the fact that the appellant itself has claimed spending huge amounts totalling to Rs. 4 crores on the Research and Development of the D2 range. Thus for the appellant to categorise such huge amounts being spent on mere workshop improvements would not be prima facie sustainable. This is not to say that the contention of the appellant of having spent this amount has been accepted but that the two pleas taken together by the appellant prima facie do not stand scrutiny. Further the report of Mr. Dujardin, as stated above, has set out the major differences between the D1 and D2 range of products specially cataloguing the new features of D2 range.

17. It is also significant to note that initially the appellant had claimed that D2 range was an improvement over the D1 range and were thus entitled to the same in view of the technical services agreement but subsequently proceeded to develop, manufacture and market what is stated by the appellant to be the equivalent to the D2 range without invoking their rights under the technical services agreement. This aspect is dealt with subsequently while dealing with the aspect of the minutes recorded and the plea of the appellant based on acquiescence and estoppel but suffice to say at this stage that the failure of the appellant to claim its rights under the technical services agreement and initiating proceedings does give rise to a prima facie view that the appellant did not agitate its rights in respect of the D2 range. The submission advanced by Mr. Chidambaram, learned senior counsel for the appellant, that no legal proceedings were taken out as the appellant did not want to embroil themselves in any litigation will stand scrutiny as admittedly there are other disputes pending between the parties and further if a party is not willing or is negligent in invoking its legal rights, the necessary consequences must follow.

18. In our considered view the learned Single Judge has rightly come to the conclusion that the appellant had failed to make out a case of mere workshop improvements specifically taking into consideration the appellant's own letter dated 31.3.99 addressed to the Superintendent, Central Excise describing the product in question as a new range.

19. The extremely important issue which has to be considered as the 5th aspect of controversy is the plea of the appellant of acquiescence, estoppel, delay and laches. In substance the appellant has submitted that the minutes recorded between the parties itself gave the go-ahead on behalf of the respondent to the appellant to proceed with the manufacture and marketing of the equivalent to the D2 range. This is based on the minutes of the board meeting held 26.3.1992 and 25.11.1992 when the representative of the respondent Mr. Rene Alletru was present and participated. There can be no dispute about the fact that the respondent had refused to give the D2 range to the appellant under the technical services agreement claiming it to be a new product and did not accept the contention of the appellant that the D2 range was a (SIC) improvement or a modification of the D1 range. This is clear from the minutes of the meeting recorded on 26.3.92. These minutes have been extracted on page 15 and 16 of the impugned judgment. It is however, contended by Mr. Chidambaram, learned counsel for the appellant, that there was a meeting held on 28.5.92, the minutes of which have been ignored. It would be relevant to extract the same.

"TE also disagreed with regard to D2 and F range as to whether the same were inside the scope of our agreements or not and TE's decision in this matter was very clear. TE was ready to deepen this issue; even if some products were common D2 and F were totally new products, having different characteristics. This was a new technology and one very good argument was that if TC intended to manufacture the same, as was expressed in the last Board meeting, he would wish good luck inasmuch as manufacturing these products was very costly.

Mr. Rene Alletru further stated that TE did not wish to grant new manufacturing rights to TC. TE's decision had been explained before the Board Members and TE still felt that there were large differences of views between the two companies and that was why Mr. Andreu had written his last letter.

(emphasis supplied)"

20. Thus Mr. Chidambaram contended that Mr. Alletru had wished good luck to the appellant to manufacture the products and claimed that this aspect had escaped the attention of the learned Single Judge. It was further contended that the respondent apparently never thought that the appellant would be able to manufacture the D2 range of products and the appellant having done so, the respondent was now preventing the appellant from continuing to market the product. Mr. Mukul Rohatgi, learned senior counsel for the respondent, on the other hand contended that a reading of the aforesaid minutes only shows that Mr. Alletru was categorical that the respondent was not willing to give the D2 range but if the appellant wanted to use its own resources in Research and Development and came out with an appropriate range, the respondent wished the appellant range, the respondent wished the appellant good luck. This, according to Mr. Rohatgi, cannot

amount to a license to copy.

21. We find ourselves in complete agreement with the conclusion arrived at by learned Single Judge as the reading of the minutes cannot be construed as a permission given by the respondent to the appellant to copy the D2 range of products. It clearly emerges from the minutes that despite the insistence of the appellant that the D2 range was nothing but an improvement or modification of the D1 range, the respondent was not willing to accept the same. The parties differed on this point of view but the appellant let it be at that and did not move any proceedings to enforce its rights under technical services agreement claiming the D2 range to be an improvement or a modification of D1 range and thus the appellant being entitled to the same. In fact the appellant claims is that it proceeded to spend huge amounts of money for development of D2 range. It appears from the minutes that the respondent did not find it a viable proposition that the appellant will be able to develop an equivalent of D1 range but wished appellant good luck in its endeavor to do so. Can such wishing of good luck be construed as a license to copy? In our considered view the answer to this question can only be no. This is also to be appreciated keeping in mind the fact that if the respondent was willing to permit the appellant to copy there was no reason for the respondent not to make available the D2 range to the appellant since the respondent would have been entitled to monetary compensation under the technical services agreement. It is clear from the minutes that the respondent wanted to market the D2 range by itself and did not want the appellant to have anything to do with the D2 range of the respondent. However, nothing could prevent the appellant from proceeding to develop its own version of D2 range.

22. We are not even required to go into the claim of the respondent that what is being sold by the appellant as a equivalent product is nothing but a process of reverse engineering in view of the fact that it was admitted before us during the hearing of the appeal by the learned counsel for the appellant that what was being marketed by the appellant was in fact copy of D2 range of the respondent. However, what was contended before us was that these minutes should be read as a license to copy. We are afraid that we are unable to read anything in the minutes which can entitle the appellant to copy the D2 range of the respondent. Thus the pleas of estoppel, acquiescence cannot be sustained. It further cannot be appreciated that if the appellant was only engaged in copying the product of the respondent, then why such a large amount would be spent on R & D. There seems to be inconsistencies in the plea of the appellant.

23. It may be also relevant to note the contention advanced in this behalf by Mr. Chidambaram, learned counsel for the appellant that the composition of the company was such that the respondent was always aware of the progress in the activities of the appellant company. In this behalf attention was invited to the shareholders agreement dated 22.2.84 to draw our attention to the composition of the Board of Directors shoeing the balance between the India company and the respondent with a restriction that no quorum for the board meeting shall be constituted unless there is presence of both the groups.

24. It is further contended that the material deviation or expansion or diversification of the activities of the company and investments of funds exceeding Rs. 5 lacs also required the consent by both the parties. Thus it was contended that what was done by the appellant must be considered as having

been done with acquiescence and consent of the respondent. We may, however, note that as set out herein above we are of the prima facie view that though the representative of the respondent participated in the minutes there was a difference of perception on D2 range and respondent never gave a license to the appellant to copy the D2 range.

25. A plea of estoppel and acquiescence is coupled with the plea of delay and laches inasmuch as it is claimed by the appellant that the respondent knew of the progress of the development of D2 range by the appellant but kept quiet permitting the appellant to proceed with the same. In this behalf reliance was placed on the brochure of Elecrama Fair in 1996 to contend that the D2 range of products was on display. On the other hand the stand of the respondent is that mere production of pamphlet only demonstrates that the appellant attended the fair. In considering the plea of laches the learned Single Judge has considered the effect of the letter dated 11.3.99 sent by the respondent to the appellant according to which the respondent claims to have come to know that the appellant was displaying and marketing D2 range and requesting them to desist from doing so. This letter was responded to by the appellant on 20.4.99. ON appreciation of the factual aspects of the matter learned Single Judge has come to the conclusion that there was no material delay as to disentitle the respondent to any relief on that account. We see no reason to interfere with this finding of the learned Single Judge arrived at on the basis of the appreciation of the factual position and keeping in mind the fact that the respondent is registered owner of the patents and designs and at no stage they had same.

26. The learned Single Judge has duly considered the claim of the respondent of having spent Rs. 4 crores as the sixth aspect. It was contended by Mr. Chidambaram, learned senior counsel for the appellant, that the respondent waited for the appellant to spend huge amounts on development of this project which is not only required for research and development work but also for manufacturing of the different moulds for the product and only when the respondent realised that the appellant had been successful in manufacturing and marketing of the product that they approached the court to cause loss to the respondent. The learned Single Judge has analysed the balance sheet for the years 1995 to 1999 to arrive at the conclusion that only an amount of Rs. 64 lacs has been spent on R & D. The subsequent certificate of Chartered Accountant explaining this has not been accepted by the learned Single Judge as there was no clear reason given for the appellant not to claim the R & D expenses in the balance sheet which would be tax deductible in nature. Mr. Chidambaram, learned Senior counsel for the appellant, sought to contend that the total expenses have to be seen not only for R & D but for manufacture of the moulds etc. as mentioned above. The learned Single Judge has come to a prima facie conclusion that this claim is not sustainable. In any case learned Single Judge has rightly observed that if the patents of the respondent are violated, it can be no defense that the appellant has spent large amounts for the same. In fact the claim of spending a large amount for R & D for development of D2 range made by the appellant would not stand scrutiny in view of the admitted position now that the range of the product of appellant is really a copy of the D2 range. The finding of the learned Single Judge to effect that "... the differences between the products, if any, are purely cosmetic in nature and in essence the products are the same are not seriously disputed before us by the appellant.

27. In the impugned judgment dated 27.11.2000 these are the pleas analysed though there is one other plea referred to in the order of the court being required to lift the corporate veil and look at the real partners of the joint venture. We see no significance of that plea in view of the findings recorded herein above.

28. A further aspect which has to be analysed arose from the subsequent application filed by the appellant IA 6504/2000 alleging that the patents of the respondent had not been worked and since they were not being commercially exploited, no injunction could be granted in favor of the respondent. This plea is sought to be again forcefully contended before us by counsel for the appellant. The Division Bench judgment of this court in *Franz Cavern Huemer v. New Yash Engineers* 1996 PTC (16) 232 has been considered by the learned Single Judge. There can be no doubt about the proposition that since the patents create a monopoly, they must be commercially exploited and the parties are not to only register a patent and sit tight over it. However, Mr. Rohatgi, learned senior counsel for the respondent sought to rely on the statement of working of patents filed in the year 1998-99 to contend that the patents are being exploited and thus the present case would not fall within the parameters laid down in *Franz Xaver's* case (supra) to categories the patents in the present case as one which are not commercially exploited and thus leading to a conclusion that public was being denied the benefit of such patents by its lack of user. The learned Single Judge accepting this contention concluded that he was not satisfied at this stage that the five patents are not being worked by the respondent in view of the statement produced by the respondent for the year 1998-99.

29. Mr. Mukul Rohatgi, learned counsel for the respondent, has also relied upon *M/s National Research Development Corporation of India, New Delhi v. The Delhi Cloth & General Mills Co. Ltd. and Ors.* AIR 1980 Delhi 132 to contend that if the patents are more than 6 year old and there has been actual user, there must be presumption of validity of patent. In the present case the patent have existed unchallenged for a period of 8 years. It has been further contended by Mr. Rohatgi that it is not required in case of a violation of the patent that the person violating the patent knew about it in view of the monopoly having been created in favor of the appellant.

30. It has to be appreciated that undoubtedly patent creates a statutory monopoly protecting the patentee against any unlicensed user of the patented device. Thus once a violation is established in case of a registered patent, subject of course, to the patent being used, it will not be permissible to contend that the said patentee is not entitled to an injunction. A monopoly of the patent is the reward of the inventor. It is also to be appreciated that law of the patent is slightly different from the law of copyright and trademark as the patent is granted only for a period of 14 years. It is also relevant to note that in the agreement of technical services dated 28.11.94 there is no mandate for the appellant to provide technical information to the appellant in respect of the manufacture of any other items but the only requirement is that the same can be done if terms and conditions are agreed upon between the parties. If the respondent would have provided D2 range of products to the appellant it would have been entitled to royalty in terms of Clause 6.4 of the said agreement. It is thus difficult to believe, as stated above, that there could be a license to copy and that is a major factor which has weighed with us in deciding the present appeal. It may also be added that Section 83 of the Patent Act, 1970 falls under Chapter XVI dealing with the working of patents, compulsory

licenses, licenses of right and revocation. Section 83 by its wording refers to the exercise of powers conferred by the said Chapter and thus in view of their being exploitation of the patent in the country by sale of product by the respondent, the public is getting the product and is not deprived of its benefit.

31. We would also like to note that while making submissions in rejoinder Mr. Arun Kathpalia, learned counsel for the appellant, sought to make submissions that in view of Section 83 read with Section 90(d) of the Patents Act, 1970 the patent has to be worked out in India by manufacture and not by import. Mr. Kathpalia sought to rely on the commentary of Terrel on the Law of Patent, 13th edition chapter X para 10.07, 10.09, 10.10, 10.13, 10.14 and 10.17. Mr. Kathpalia submitted that same principles would apply in respect of the Indian law and thus in the absence of definition of commercial scale, natural and ordinary meaning should be given to the expression. He submitted that in terms of the said treaties the general principles set out are that a patentee must manufacture the product in that country and it should not also be mere improvements. We have, however, considered this aspect aforesaid and have come to the conclusion that there is no force in the submission of the appellant.

32. The learned Single Judge had found a prima facie case in favor of the Respondent and that the balance of convenience lay in grant of temporary injunction and that irreparable loss and injury was likely to be suffered by the respondent, in view of the respondent being the registered owner of the patent and there being violation of the same by the appellant. We may further note that out of the total life of a patent of 14 years almost 11 years have now elapsed. The learned Single Judge duly considered all the aspects and we see no illegality or arbitrariness in the impugned order and thus there is no reason to interfere with the findings of the learned Single Judge.

33. In the end we may note that learned Single Judge has also recorded that he has taken note only of the prima facie view of the factors which were considered for the purpose of interim order and has not considered all pleas and authorities cited. The same position arose before us where copious written submissions and a large number of judgments were filed but we have considered the submissions advanced before us keeping in mind the legal position and the facts on record as emerged from the orders of learned Single Judge.

34. The appeal is consequently dismissed with costs of Rs. 5,000/-.

35. Interim orders stand vacated.