

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

% **Date of decision: 13th March, 2020**

+ **RFA(OS) 10/2020 and CM Nos. 3551/2020 (delay) &
3553/2020 (stay)**

BHARAT BHOGILAL PATEL

..... Appellant

Through: Mr.Ashok Mittal, Mr.Partha J. Deka
and Mr.Harsh N. Gokhale,
Advocates

versus

NOKIA CORPORATIONS & ORS

..... Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

RAJIV SAHAI ENDLAW, J.

1. This Regular First Appeal impugns the judgment and decree dated 28th May, 2014 in CS(OS) 3071/2011 of this Court.
2. This appeal filed on 17th January, 2020 and re-filed on 20th January, 2020 and 23rd January, 2020, came up first before this Court on 29th January, 2020 when at the request of the counsel for the appellant, the appeal was adjourned to today. The appeal is accompanied with CM No. 3551/2020 for condonation of 2021 days delay in filing thereof.
3. The respondent/plaintiff had instituted the suit from which this appeal arises, for declaration of non-infringement and for restraining

the appellant/defendant from meting out groundless threats of infringement to the respondent/plaintiff.

4. The impugned judgment records that none appeared on behalf of the appellant/defendant on several dates and consequently the appellant/defendant was proceeded against ex-parte on 23rd January, 2014.

5. Vide impugned judgement and decree, the suit of the respondent/plaintiff against the appellant-defendant has been decreed for:-

- a. Declaration that the process employed for the manufacture of products imported or manufactured by the respondent/plaintiff does not infringe the appellant/defendant's patent number 189027.
- b. Declaration that the use or manufacture of the machinery employed by the respondent/plaintiff for laser engraving process does not infringe the appellant/defendant's patent No. 188787.
- c. For permanent injunction restraining the appellant/defendant from threatening the respondent/plaintiff by circulars, advertisements or by communications with proceedings for infringement and from instituting any such proceedings against the respondent- plaintiff.

6. The reasons pleaded for condonation of delay are:-

- a. That the appellant/defendant had sent letters dated 21st

February, 2013 and 18th February, 2014 wherein he had made a request that due to financial constraints he is not able to engage an independent lawyer and therefore, requested this Court to provide him with free legal aid.

- b. The condition of the appellant/defendant was so bad that he was not in a position to travel to Delhi on every hearing of the suit.
- c. The appellant/defendant was under the impression that the request contained in his letters will be considered and the suit will not be proceeded with further and he will receive a reply to his letters.
- d. The appellant/defendant on the one hand was struggling his financial limitations and on the other hand running from pillar to post to safeguard his inventions and discoveries in litigation against big players of industries who were trying to infringe the patents of the appellant. There are number of litigations pending in various parts of the country and which were consuming the time of the appellant.
- e. Upon not receiving any reply to his letters aforesaid, the appellant/defendant asked the present counsel to enquire about the status of the suit and whereupon he was informed of the order dated 24th May, 2014 decreeing the suit of the respondent/plaintiff and immediately whereafter the present appeal is being filed.

7. The reasons given by the appellant/defendant in the application for condonation of 2021 days are not found to constitute sufficient cause for condonation of inordinate delay in preferring this appeal.

8. The counsel for the appellant/defendant has not argued that the appellant/defendant did not engage an Advocate to appear on his behalf in the suit from which this appeal arises; rather, reference has repeatedly been made to the written statement filed by the appellant/defendant to the suit, and copy of which has been filed before this Court. A perusal of the said written statement shows the same to have been filed through an Advocate. The appellant/defendant, even if was unable to contest the suit as claimed, ought to have instructed the Advocate already engaged, for taking the requisite pleas in the suit and / or ought to have verified from the Advocate, whether his dispatching the letters would suffice.

9. It cannot be lost sight of, that the suit was of a commercial nature, though of an era prior to coming into force the Commercial Courts Act, 2015. The averments of the appellant/defendant, of financial constraints and inability to defend the suit from which this appeal arises, are even otherwise vague. It is not stated that at the relevant time, the business of the appellant/defendant had come to a standstill. There is no explanation how the appellant/defendant at the relevant time was meeting his day to day expenses; rather it is pleaded that the appellant/defendant at the relevant time was fighting various litigations. It is not the case that the appellant/defendant, owing to the

reasons averred, was unable to pursue any of the other litigations. It is obvious that the appellant/defendant took a conscious decision to absent himself from the suit from which this appeal arises and having so consciously decided, cannot at his *ipse dixit* decide when to participate and when not to participate in the litigation and when to again commence participating in a litigation. The litigation, especially on the ordinary original civil jurisdiction of this Court, is governed by Statutory Provisions contained in CPC and other Statutes and the appellant/defendant having commenced defending the suit by engaging an Advocate, cannot claim ignorance thereof and ought to suffer for his decisions.

10. The appellant/defendant is found to have taken a chance, of not contesting the suit, and now when the suit has been decided against him, cannot be permitted to appeal their against.

11. There is also no explanation why the appellant/defendant kept quiet after 2014, till now, and chose to now only contact the Advocate who has preferred this appeal, to find out the fate of the suit.

12. Thus, no case for condoning the inordinate delay in preferring the appeal is made out.

13. The counsel for the appellant/defendant has contended that the suit was not maintainable owing to this Court lacking territorial jurisdiction to entertain the suit. Attention of this court is invited to the paragraph in the written statement filed, objecting to territorial jurisdiction.

14. Attention of the counsel for the appellant/defendant has however been invited to Section 21 of the CPC which bars any objection as to the place of suing being allowed by the Appellate Court unless such objection was taken in the Court at first instance at the earliest possible opportunity and where issues are settled, on or before such settlement and unless there has been a consequent failure of justice. The appellant/defendant though claims to have taken an objection in the written statement but gave up his defence including the said objection by choosing not to participate in the suit and did not claim any issue qua its objection of territorial jurisdiction and did not contest the territorial jurisdiction as pleaded by the respondent/plaintiff. The appellant/defendant now in this appeal is not entitled to raise the plea of territorial jurisdiction.

15. The counsel for the appellant/defendant, to make out a case of failure of justice, has contended that the appellant/defendant has filed suits against several parties including the respondent/plaintiff, for infringement of its patent. On inquiry, it is stated that the suit for infringement was filed against the respondent/plaintiff prior to the institution of the suit from which this appeal arises. It is contended that the appellant/defendant has claimed damages also in the subject suit and owing to the impugned judgment, the appellant/defendant would not be entitled to damages from the respondent/plaintiff in the suit filed by the appellant/defendant against the respondent/plaintiff for infringement. It is also contended that the claim of the appellant/defendant against other parties would also be affected.

16. We are however unable to find any plea in the written statement filed by the appellant/defendant to the suit, of pendency of a previously instituted suit at Bombay, of infringement and recovery of damages against the respondent/plaintiff. It thus appears that the suit, even if any filed by the appellant/defendant against the respondent/plaintiff for infringement of patent and for ancillary reliefs, must have been filed after the institution of the suit from which this appeal arises. The counsel for the appellant/defendant now states that the suit was instituted in the year 2014. It appears that the suit has been instituted after the impugned judgment, in as much as the suit from which this appeal arises is of the year 2011.

17. The counsel for the appellant/defendant has also contended that the learned Single Judge, while passing the impugned judgment erred in not considering the written statement of the appellant/defendant though on record.

18. Though the impugned judgment does not record any such written statement having been filed, but the counsel for the appellant/defendant states that the written statement was filed and is also on record. Even if it be so, once the defendant gives up his defence and stops appearing, there is no need for the Court to deal with the averments in the written statement which remain unsubstantiated. Though the counsel for the appellant/defendant states that the law is otherwise, but is unable to show.

19. On enquiry, it is informed that the subject patent lapsed in the year 2018.

20. As far as the contention, of the suits for infringement filed by the appellant/defendant against others is concerned, it is not found to be correct. The declaration granted is with respect to the process adopted by the respondent/plaintiff and does not declare the patent of the appellant-defendant invalid.

21. Our judicial conscious also is thus satisfied that no injustice is being meted out to the appellant/defendant, in not condoning the long delay in institution of the appeal.

22. The delay in preferring the appeal having not been condoned, the CM No. 3551/2020 is dismissed.

23. Axiomatically, the appeal is also dismissed.

राजिव मेव जयते **RAJIV SAHAI ENDLAW, J**

SANGITA DHINGRA SEHGAL, J

MARCH 13, 2020
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