

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL APPEAL NO.57 OF 2023

M/s. Tri-Parulex Fire Protection System)
A partnership firm, having its registered office)
at 28, Ansal Garden, Enclave Main, Hapur)
Road, Ghaziabad – 201 013)
Also at :)
G-30, Udyog Kunj, UPSIDC Industrial Area, NH-)
24, Ghaziabad, Uttar Pradesh – 201 002) Appellant

V/s.

M/s. CTR Manufacturing Industries Private)
Limited, a company registered under the)
provisions of the Companies Act, 1956 and)
having its registered office at Nagar Road, Pune)
– 411 014 and regional Office at 403 B, Turf)
Estate, Shakti Mills Lane, off Dr. E. Mosses)
Road, Mahalaxmi (W), Mumbai – 400 001) Respondent

**WITH
INTERIM APPLICATION (L) NO.1890 OF 2023
IN
COMMERCIAL APPEAL NO.57 OF 2023**

Dr. Veerendra Tulzapurkar, Senior Advocate a/w. Mr. Chetan Kavdia, Mr. B.B. Sharma and Ms. Mansi Naik i/b. Secure Legal for applicant/appellant.
Mr. Sharan Jagtiani, Senior Advocate a/w. Mr. Himanshu Kane, Mr. Hiren Kamod, Mr. Amit Jajoo, Mr. Nirav Parmar, Mr. Priyank Kapadia, Mr. Darpan Bhatia and Mr. Siddhant Trivedi i/b. Induslaw for respondent.

**CORAM : K. R. SHRIRAM & RAJESH S. PATIL, JJ.
RESERVED ON : 13th APRIL 2023
PRONOUNCED ON : 25th APRIL 2023**

JUDGMENT (PER K.R. SHRIRAM, J.) :

1 Since the Court heard the counsels extensively, both counsels agreed that the Court can dispose the appeal at the admission stage itself.

2 This appeal challenges an order dated 19th December 2022 in Interim Application (lodging) No.17230 of 2021 that was filed by respondent. By the said order, the interim application was made absolute in terms of prayer clauses – (a) and (b), which read as under :

(a) That pending the hearing and final disposal of the suit, Tri-parulex by itself, its proprietors, partners, agents and servants be restrained by a temporary order and injunction of this Hon'ble Court from infringing the Plaintiff's Patent No.202302 by making, using, offering for sale or selling the Impugned Product or any other system for preventing, protecting and/or detecting explosion and/or fire of electrical transformer as claimed in any of the claims 1 to 6 in the Plaintiff's Patent No. 202302 and/or by the act of manufacturing, offering for sale, selling and/or using system for preventing, protecting and/or detecting explosion and/or fire of electrical transformer manufactured directly by the method claimed in any of the claims 7 to 14 of the Plaintiff's Patent No.202302 and/or a system for preventing, protecting and/or detecting explosion and/or fire of electrical transformer which is a colourable variation of the system claimed in any of the claims 1 to 7 of the Patent No.202302 and/or a system for preventing, protecting and/or detecting explosion and/or fire of electrical transformer which is substantially same as the one claimed in any of the claims 1 to 7 of the Patent No.202302 and/or any system for preventing, protecting and/or detecting explosion and/or fire of electrical transformer inter alia containing all the essential integers claimed in the claims 1 to 7 of the Patent No. 202302 and/or in any other manner whatever;

(b) That pending the hearing and final disposal of the suit, Tri-parulex by itself, its proprietors, partners, agents and servants be restrained by a temporary order and injunction of this Hon'ble Court from circulating and submitting to various customers/potential customers of the Plaintiff, including but not limited to, all the state and public work departments and other appropriate authorities, the technical brochures/technical specifications/technical drawings of the Impugned Product or any other product infringing Plaintiff's Patent which display and show identical/substantially similar method, i.e., principal of differential relay and Buchholz Relay, provided under the Plaintiff's Patent.

The learned Single Judge, while granting these prayers, in paragraphs 20, 21 and 28 of the impugned order, has opined as under :

20. This Court is of the opinion that in the absence of reference to the differential relay and use of an electrical signal in the claims leading to grant of the defendant's patent, it is difficult to appreciate how the defendant can claim that its system utilizes a combination of signals between the differential relay and the Buchholz relay, which is different from the specific sequence of combination of signals in the registered patent of the plaintiff. While the defendant may be able to claim that the question whether signals can be generated from the differential relay and the Buchholz relay as also the circuit breaker to the control unit can be different from the strict sequence of the plaintiff's patent, would need a full dress trial and leading of evidence, so long as the claims of the defendant for grant of its patent do not refer to the differential relay at all, the insistence to wait for a trial does not seem to be appropriate. This Court is of the opinion that the pith and marrow of the patent of the plaintiff and its inventive step is the combination of signals generated by the differential relay, Buchholz relay and the circuit breaker. Even if it is to be taken that the pith and marrow of the patent granted to the plaintiff is limited to the strict sequence of generation of signals triggering further steps of fire prevention/protection, the plaintiff has made out a strong prima facie case that the moment the defendant claims to be offering a product using differential relay as one of the components, which operates in combination with Buchholz relay, it infringes the registered patent of the plaintiff, simply for the reason that the claims leading to grant of patent to the defendant do not refer to the differential relay at all. In the absence of any material prima facie to show use of differential relay for generation of a signal in the patent and claim of the defendant, it cannot be heard to say that if differential relay, Buchholz relay and circuit breakers are used in a combination different from the strict sequence for which the plaintiff holds patent, it cannot be said to be a case of infringement. The expert opinion on which the defendant has placed reliance also does not clarify this position, for the reason that claims on the basis of which the defendant was granted patent, does not bring out use of differential relay as an essential part of the process.

21. Additionally, an observation in the expert opinion on which the defendant places reliance shows that the said expert specifically states that differential relay, being an electrically operated relay has the advantage of faster operation. This prima facie supports the contention raised on behalf of the plaintiff that when the differential relay is used in combination with Buchholz relay, the former would be

faster in operation as the Buchholz relay is a mechanical relay. The said expert further observes that both devices have been used for transformer protection since many decades, sometimes in isolation and at times together, but he does not specify as to when and in which specific case were the two relays used in combination, other than the manner in which the plaintiff has used the same, which has led to the plaintiff being granted patent in its favour. In fact, the use of the two relays, with the circuit breaker in combination, has been found to be the inventive step in the patent granted to the plaintiff.

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28. A perusal of the above stated contents of the complete specifications of the defendant's patent shows that reference to differential relay is conspicuous by its absence and that therefore, there is substance in the contention raised on behalf of the Plaintiff that it cannot lie in the mouth of the defendant that so long as it is using differential relay and Buchholz relay along with circuit breaker in a combination different from that of the plaintiff, no case for infringement can be said to be made out.

3 In the interim application, as could be seen from the prayers granted, respondent was seeking injunction against alleged infringement by appellant of respondent's Patent No.202302 and from manufacturing, selling etc., the system for preventing, protecting and/or detecting explosion and/or fire of electrical transformer manufactured directly by the method claimed in any of the claims 1 to 14 of respondent's Patent No.202302. According to respondent, it is a product as well as a process patent, whereas it is appellant's case that it was only a process patent.

Appellant is also, admittedly, a patentee of Patent No.301322 for a system and method for preventing, protecting and/or detecting fire and explosion of electrical transformers.

Both the patents are valid and subsisting and both appellant as well as respondent are commercially exploiting their respective patents and offering their system to customers. Appellant and respondent are competitors offering the same/similar system and method for preventing, protecting and/or detecting fire and explosion of electrical transformers.

4 Respondent has filed the suit contending that appellant is not using its patent but using a system different from its patent and which is an infringement of respondent's patent. Respondent had moved for ad-interim relief on 27th September 2021 where a statement was made by appellant that it was exploiting its own patent and that it would not infringe respondent's patent. After the pleadings were completed in the interim application, the impugned order came to be passed principally on the grounds that appellant was not using the system for which patent was granted to appellant. The pith and marrow of respondent's patent was the use of differential relay, buchholz relay and circuit breaker in a completely unique and novel fashion. The learned Single Judge held that appellant's patent did not contain any reference to differential relay but in actual practice, appellant was using differential relay and the signals generated by differential relay, buchholz relay and circuit breaker as a part of appellant's product amounted to infringement of respondent's patent. The learned Single Judge noted that the use of differential relay, buchholz relay and circuit breaker was previously known to the art but respondent's patent

showed precisely a combination of the use and the timing of differential relay, buchholz relay and circuit breaker. The learned Single Judge held that the use of these three integers by appellant amounted to infringement and granted the interim application.

5 At the time of hearing the interim application, there was another interim application, which had been taken out by respondent bearing (lodging) No.7808 of 2022, under Order 39 Rule 2A and 11 of the Code of Civil Procedure, 1908 (CPC). This application was for contempt allegedly committed by appellant by breaching the ad-interim order. The Court, however, is yet to hear the said interim application because the Court was of the opinion that detailed hearing was required and the said application would be heard afterwards.

6 Appellant denied any infringement and the main defence of appellant was that the interim application itself cannot be decided on the material before the Court and that evidence would be required and without a full fledged trial, the main application could not be granted. This contention of appellant was rejected in the impugned order by holding that interim relief was required to be given and that cannot await the full fledged trial.

7 The issue in this appeal is very narrow. Admittedly both appellant as well as respondent held patent in their name for a system and method for preventing, protecting and/or detecting fire and explosion of

electrical transformers. The difference was respondent's patent included use of a differential relay. The trigger for respondent to file the suit was appellant submitting a bid in response to a notice inviting Tender issued in October 2020 by Adani Electricity Mumbai Limited (Adani). Adani had called for submission of bids for supply, installation, testing and commissioning of Nitrogen Injection Fire Prevention System (NIFPS) for 33-22/11kV 10MVA and 20MVA power transformers used for electricity distribution business of Adani within Mumbai. The Tender document contains various terms and conditions to be complied with by the potential bidders or participants in the Tender. Appellant as well as respondent bid for the Tender and respondent lost the bid as it was not the lowest bidder. The technical specification for NIFPS unit to be supplied under the said Tender included a system and method for preventing, protecting and/or detecting explosion and/or fire of electrical transformers. The technical specifications of the said Tender prescribed a series of signals for activation of the NIFPS unit in auto prevention mode. The auto prevention mode required use of signals generated from differential relay, buchholz relay parallel with pressure relief valve or Rapid Pressure Rise Relay (RPRR) and circuit breaker. It is respondent's case that the sequence or logic of operation of NIFPS unit in auto prevention mode as required to be supplied for said Tender was exactly similar to sequence or logic of operation as claimed in respondent's patent. It is respondent's case that the complete compliance to

the technical specification of the said Tender was not achievable without infringing upon respondent's patent. Hence, it was incumbent upon any bidder/participant to the said Tender to seek necessary deviations from the technical specifications of the said Tender to avoid infringement of respondent's patent, which was permitted to the bidders/participants participating in the said Tender under the terms thereof. According to respondent, appellant participated in the said Tender and has made offer for sale of NIFPS unit to Adani comprising of "a system and method for preventing, protecting and/or detecting explosion and/or fire of electrical transformers" as claimed in respondent's patent without taking any deviation whatsoever.

8 According to respondent, the technical drawing submitted by appellant to Adani which depicts the operational logic or the manner of operation of the NIFPS unit offered for sale in pursuance to the said Tender has been accepted by Adani. The logic of operation or manner of operation of NIFPS unit, as depicted in the technical drawings submitted by appellant to Adani, shows a system operating in auto prevention mode by use of signals from differential relay, buchholz relay parallel with pressure relief valve or RPRR and circuit breaker/circuit trip. This logic of operation or manner of operation of NIFPS unit submitted by appellant to Adani is exactly similar to the logic or manner of operation of "a system and method for preventing, protecting and/or detecting explosion and/or fire of

electrical transformers” as claimed in respondent’s patent. Therefore, appellant has committed a breach of respondent’s patent. Respondent has relied upon a technical drawing allegedly submitted by appellant to Adani to make this allegation. Appellant states that is a fabricated document. *Prima facie* it does not appear to be a loose statement being made by appellant. We say this because respondent has annexed to the compilation of documents one page, which it has procured from Adani’s files (source is not disclosed – not officially) and this page, which is a drawing, is not initialed by anyone, whereas all other pages are initialed by someone for Adani.

9 Dr. Tulzapurkar for appellant did not deny the fact that appellant had used differential relay in its system to be supplied to Adani but submitted that that does not mean respondent’s patent is infringed. Dr. Tulzapurkar submitted that the pith and marrow or the substance is that respondent’s patent essentially uses technology/logic based upon signals from differential relay, buchholz relay and circuit breaker in a specific sequence as could be seen from paragraph 11 of the interim application, paragraph 11 of the plaint and affidavit in rejoinder. In respondent’s patent, the first signal is provided by differential relay. It is thereafter, the second signal is provided by using buchholz relay and the third signal is provided by using circuit breakers. It is this sequence which is the pith and marrow of respondent’s patent. Dr. Tulzapurkar submitted that the learned Single Judge, however, has proceeded on the basis that the moment appellant

claims to be offering a product using differential relay as one of the components which operates in combination with buchholz relay, it infringes the registered patent of respondent. It is an error apparent on the face of the record because respondent itself never claimed any monopoly in the use of these three integers. Dr. Tulzapurkar submitted that the use of these three integers is a matter of prior art and the patent does not grant respondent monopoly of the use of these three integers to the exclusion of others. Respondent claims novelty in the sequence and there is nothing on record to indicate that just because differential relay is used by appellant and appellant's product uses any sequence and not in the straight sequence as claimed by respondent, there can be any infringement. Dr. Tulzapurkar submitted that the learned Single Judge has erred by stating the fact that appellant using differential relay in its system would amount to infringement.

10 Mr. Jagtiani submitted that appellant has not produced any evidence to prove that its system utilizes a combination of signals between differential relay and buchholz relay which is different from the specific sequence of combination of signals in the registered patent of respondent. Mr. Jagtiani submitted that the submission of Dr. Tulzapurkar that its system utilizes a combination of signals or does not utilize signals in a fixed sequence like the product of respondent cannot be accepted because respondent's expert has opined that differential relay, being an electrically

operated relay, has the advantage of faster operation. Therefore, it would support the contention raised on behalf of respondent that when differential relay is used in combination with buchholz relay, the former would be faster in operation as buchholz relay is a mechanical relay. According to Mr. Jagtiani the moment appellant uses a system operating in auto prevention mode by use of signals from differential relay, buchholz relay parallel with pressure relief valve or RPRR and circuit breaker/circuit trip, it is crystal clear that the system would employ same sequence or logic as respondent's patent to operate in auto prevention mode which comprises of signals from differential relay, buchholz relay (with a PRV or a RPRR) and a circuit breaker in same combination for operation in auto prevention mode. The learned Single Judge has accepted respondent's submissions and in paragraphs 21 and 22 held that so long as the claims of appellant for grant of its patent do not refer to differential relay at all, the moment appellant claims to be offering a product using differential relay as one of the components, which operates in combination with buchholz relay, it infringes the registered patent of respondent, simply for the reason that the claims leading to grant of patent to appellant do not refer to differential relay at all.

11 In our view, having heard the counsels, the learned Single Judge by the impugned order has granted a right much beyond what was granted by the patent itself to respondent. Respondent's own case is that its

patent consists of a system which is generated in three systems, viz., differential relay, buchholz relay and circuit breaker, in a specific sequence. The case pleaded in the plaint and in the rejoinder is “the pith and marrow or the substance is that respondent’s patent essentially uses technology/logic based upon signals from differential relay, buchholz relay and circuit breaker in a specific sequence”. Paragraph 11 of the interim application of respondent reads as under :

11. It can therefore be seen that the Plaintiff’s Patent essentially uses technology/logic based upon signals from the Differential Relay, Buchholz Relay and Circuit breaker in a sequence which gives the quickest and most reliable signal for saving the electrical transformer from exploding and/or catching fire.

Paragraph 11 of the plaint is identical. Paragraph 6.2(v) of respondent’s affidavit in rejoinder reads as under :

(v) Therefore, the only combination or logic of operation that would result in achieving prevention of explosion and fire in transformer is the generation of first signal from Differential Relay and generation of second signal from Buchholz Relay (paralleled with pressure relief valve or rapid pressure release valve) coupled with generation of third signal from master trip Circuit Breakers, as is the pith and marrow or very fundamentals of the invention claimed in Plaintiff’s Patent.

12 In respondent’s patent in claim 1 it is stated as under :

1. A system for preventing, protecting and/or detecting explosion and/or resulting fire of electrical transformer (30) in advance before decomposition of combustible coolant fluid/dielectric oil, said system comprising : one or more differential current sensing electrical relay (26) for calculating the difference of input current and output current with the ceiling level and thereby providing first input to the control unit (1), if ratio of input current to output current exceeding more than the predetermined limit; wherein said input current and output current are the currents from high

voltage conductor (22) and low voltage conductor (23) of the electrical transformer (30) respectively,

one or more buchholz relay (18) for sensing the excessive oil surge in the transformer and thereby providing second input to the control unit (1),

one or more circuit breakers for obtaining input signals from current sensing electrical relay (26) and buchholz relay (18) and thereby providing third input signal to control unit (1),

one or more control unit (1) for receiving first, second and third input signals from the said differential current sensing electrical relay (26), buchholz relay (18) and circuit breakers (24, 28) respectively, and thereby generating control signal to energize lifting magnet (5) for draining of the combustible coolant fluid (11) through the drain valve (4) and subsequently injecting inert gas from the bottom of the electrical transformer tank (14) through a nitrogen release valve (6) for stirring the combustible coolant fluid (11) and bringing down temperature and oxygen contents for preventative measures against the explosion and/or resulting fire in the electrical transformer (30).

Claim 7 of respondent's patent reads as under :

7. A method for protecting, preventing and/or detecting explosion and/or resulting fire of electrical transformer (30) in advance (before generation of electric are) by using the system as claimed in claim 1, wherein the said method comprising the steps of :

(a) calculating difference of input current and output current across the electrical transformer (30) with the ceiling level by using one or more differential current sensing electrical relay (26) and thereby providing first input signal to the control unit (1), if ratio of input current to output current exceeding more than the predetermined limit; wherein said input current and output current are the currents from high voltage conductor (22) and low voltage conductor (23) of the electrical transformer (30) respectively,

(b) sensing/detecting the excessive oil surge in the said transformer by using buchholz relay (18) and thereby providing second input signal to the control unit (1),

(c) providing third input signal to control unit (1) through circuit breakers (24, 28) while the said circuit breaker receiving input signals from buchholz. relay (18) and current sensing electrical relay (26),

(d) generating a control signal on the basis of first, second and third input signals from the said differential current sensing electrical relay (26), buchholz relay (18) and circuit breakers which are given to control unit (1) and thereby

energizing a lifting magnet (5) for draining of the combustible coolant fluid (11) through the drain valve (4) and subsequently injecting inert gas from the bottom of the electrical transformer tank (14) through a nitrogen release valve (6) for stirring the coolant and bringing down oxygen contents for preventative measures against the explosion and/or resulting fire in the electrical transformer (30).

13 The use of three integers in a particular sequence is, therefore, set out. The first signal is provided by differential relay, the second signal is provided by using buchholz relay and the third signal is provided by the use of circuit breakers. The reference to this sequence has been repeated even in the summary of invention, statement of invention and detail description of invention forming part of respondent's patent. It read as under :

SUMMARY OF THE INVENTION

Accordingly the present invention relates to a system and method for preventing, protecting and/or detecting explosion and/or resulting fire of electrical transformer in advance, said system comprising one or more differential current sensing electrical relay for calculating the difference of input current and output current with the ceiling level and providing first input to the control unit, if ratio of input current to output current exceeding more than the predetermined limit, one or more buchholz relay for sensing the excessive oil surge in the transformer or rapid pressure rise by rapid pressure rise relay (RPRR) or pressure relief valve (PRV) providing second input to the control unit, one or more circuit breakers for obtaining input signals from buchholz relay/PRV/RPRR and/or other sensing means and providing third input to control unit, one or more control unit obtaining first, second and third input signals from the said electrical relay, buchholz relay/PRV/RPRR and circuit breakers, generating control signal to energize lifting magnet for draining of the combustible coolant fluid through the drain valve and subsequently to inject inert gas from the bottom of the electrical transformer tank through a nitrogen release valve for stirring the coolant and bringing down oxygen contents for preventative measures against the explosion and/or resulting fire in the electrical transformer.

STATEMENT OF THE INVENTION

A system for preventing, protecting and/or detecting explosion and/or resulting fire of electrical transformer (30) in advance before decomposition of combustible coolant fluid/dielectric oil said system comprising : one or more differential current sensing electrical relay (26) for calculating the difference of input current and output current with the ceiling level and thereby providing first input to the control unit (1), if ratio of input current to output current exceeding more than the predetermined limit, wherein said input current and output current are the currents from high voltage conductor (22) and low voltage conductor (23) of the electrical transformer (30) respectively,

one or more buchholz relay (18) for sensing the excessive oil surge in the transformer and thereby providing second input to the control unit (1),

one or more circuit breakers for obtaining input signals from current sensing electrical relay (26) and buchholz relay (18) and thereby providing third input signal to control unit (1),

one or more control unit (1) for receiving first, second and third input signals from the said differential current sensing electrical relay (26), buchholz relay (18) and circuit breakers (24, 28) respectively, and thereby generating control signal to

DETAIL DESCRIPTION OF THE INVENTION

Accordingly the present invention relates to system for prevention, protection and/or detection explosion and/or resulting fire of electrical transformer (30) in advance, said system comprising : one or more differential current sensing electrical relay (26) for calculating the difference of input current and output current with the ceiling level and providing firm input to the control unit (1), if ratio of input current to output current exceeding more than the predetermined limit, one or more buchholz relay (18) for sensing the excessive oil surge in the transformer and providing second input signals to the control unit (1), one or more circuit breakers for obtaining input signals from buchholz relay (18) and/or other sensing means and providing third input to control unit (1), one or more control unit (1) obtaining first, second and third input signals from the said differential current sensing electrical relay (26), buchholz relay (18) and circuit breakers (24, 28), generating control signal to energize lifting magnet (5) for draining of the combustible coolant fluid (11) through the drain valve (4) and subsequently to inject inert gas from the bottom of the electrical transformer tank (14) through a nitrogen release valve (6) for stirring the combustible coolant fluid (11) and bringing down temperature and oxygen contents for preventative measures against the explosion and or

resulting fire in the electrical transformer (30).

Respondent's case, therefore, as stated in the plaint, in the interim application and in the rejoinder is that it is this sequence which is the pith and marrow of respondent's patent.

14 The learned Single Judge, however, in paragraph 20 as quoted above, has stated that the moment appellant claims to be offering a product using differential relay as one of the components, which operates in combination with buchholz relay, it infringes the registered patent. In our view, this is an error apparent on the face of the record because respondent itself never claimed any monopoly in use of these three integers. Admittedly, the use of the three integers is a matter of prior art. The patent does not grant respondent monopoly of the use of these three integers to the exclusion of others. Use of the three integers per se is not a prerogative granted to respondent by the patent. Respondent claims novelty in the sequence. The learned Single Judge, therefore, grants higher rights than what the patent grants and holds that by use of the integers in any combination amounts to infringement by appellant. The learned Single Judge failed to appreciate appellant's case that signals from any one or more protective devices/integers and tripping of circuit breaker, in any combination/sequence is enough to generate a control signal which will trigger further steps for nitrogen injection into the transformer to prevent fire or explosion. The finding of the learned Single Judge in paragraph 28 as

quoted above is that so long as appellant is using differential relay alongwith buchholz relay and circuit breaker in any combination even if different from respondent, it would amount to infringement. This finding is *ex-facie* erroneous.

15 Mr. Jagtiani had submitted that was the correct view because if differential relay and buchholz relay and circuit breaker are used, they could function only in the sequence as per the patent granted to respondent. In our view, that is not a correct stand. Dr. Tulzapurkar submitted, and rightly so, that respondent themselves have stated that the integers can function independently and need not be in a sequence. Paragraph 9 (c) (d) and (e) of the plaint read as under :

(c) As soon as an imbalance in incoming and outgoing current or vice-versa is sensed, the differential relay will send a signal to the circuit breakers connected to the electrical transformer to trip. When the Buchholz Relay detects a surge in the combustible coolant oil, it sends a signal to the circuit breakers of the electrical transformer to trip.

(d) A combination of the aforesaid two signals coupled with transformer isolation results in activating the safety mechanism. As a first step the transformer is isolated. The isolation of the transformer results in de-energizing of the transformer as no further energy is fed into the transformer, and consequently helps in preventing the explosion.

(e) As a second step, whenever the control unit receives signals from any of the above devices, it generates a control signal to energize a lifting magnet for draining of the combustible coolant fluid and subsequently injects nitrogen gas from the bottom of the electrical transformer through a valve so as to stir the combustible coolant fluid and reduce the temperature and the presence of oxygen.

16 Therefore, respondent itself has stated that when an imbalance in incoming and outgoing current or vice versa is sensed, differential relay

will send a signal to circuit breakers connected to the electrical transformer to trip. When buchholz relay detects a surge in the combustible coolant oil, it sends a signal to the circuit breaker of the electrical transformer to trip. A combination of these two signals coupled with transformer isolation results in activating the safety mechanism. Whenever the control unit receives signals from any of these two devices, it generates a control signal to energize a lifting magnet for draining of the combustible coolant fluid. Even in the written submissions that was submitted by respondent to the learned Single Judge, in paragraph 24 (viii) and (ix) it was submitted as under :

(viii) Circuit Breaker : A combination of Differential Relay and Buchholz Relay engages the trip circuit of the circuit breakers that results in transformer isolation which allows the faulty transformer to be taken off grid, isolated from the rest of the power system. No further energy is fed into the transformer which consequently helps in preventing explosion. It is not essential for the Differential Relay and Buchholz Relay inputs to work in sequence to activate the circuit breaker. The circuit breaker can activate simply on receipt of input from the Differential Relay (even if it is not followed by a pressure build up which activates the Buchholz Relay). This is evident from a detailed specification of the Plaintiffs Patent at Pg. 89 of the Complaint which states :

"[...] As soon as a predetermined limit of imbalance in incoming and outgoing current or vice versa is exceeded, the differential current sensing electrical relay will trip giving a signal to the incoming and outgoing circuit breakers connected to the electrical transformer to trip and the electrical transformer will be isolated from the incoming source (and also outgoing source, in case the electrical transformer outgoing is connected to another electrical transformer outgoing in parallel). Also, if there is a surge in the combustible coolant fluid due to a sudden turbulence build up, it is detected by the Buchholz relay. The Buchholz relay will also give a signal to the incoming and outgoing circuit breakers of the electrical transformer to trip and the electrical transformer will be isolated. [...]"

(ix) Thus, a Differential Relay will activate the Circuit Breaker even without a Buchholz Relay. The unique and inventive feature is in isolation of the transformer by breaking the circuit which prevents explosion.

17 Respondent themselves have stated it is not essential for differential relay and buchholz relay inputs to work in sequence to activate the circuit breaker and a differential relay will activate the circuit breaker even without a buchholz relay. Therefore, the submission that the moment a differential relay is used, which was not in the patent granted to appellant, the only natural corollary that it has to function in a sequence granted to respondent is not acceptable.

18 Respondent had also relied upon an affidavit of an Expert one Nandan Gajanan Phatak affirmed on 30th July 2021. Even this Expert in paragraph 9(v) states as under :

(v) The above schematic representation makes the matter abundantly clear. It clearly describes a device that upon detecting current imbalance by differential relay and/or oil surge by Buchholz relay trips the circuit and isolates the transformer. Subsequently, the combustible fluid is drained and nitrogen gas shall be injected.

19 Even the specification for NIFPS given by Adani also is an indicator to the effect that there need not be any specific sequence as claimed in respondent's patent. Paragraph 1.2 reads as under :

1.2. Activation of the fire protective system

Mal-functioning of fire prevention/extinguishing system could lead to interruption in power supply. The supplier shall ensure that the probability of chances of malfunctioning of the fire protective system is practically zero. To achieve this objective, the supplier shall plan out his scheme of activating

signals which should not be too complicated to make the fire protective system inoperative in case of actual need. The system shall be provided with automatic control for fire prevention and fire extinction. Besides automatic control, remote electrical push button control at Control box and local manual control in the fire extinguishing cubicle shall also be provided. The following electrical-signals shall be required for activating the fire protective system under prevention mode/fire extinguishing mode.

It says “*to achieve this objective, the supplier shall plan out his scheme of activating signals*”. Even the Commissioning Certificate issued by Adani provides that the signal can be given in any sequence and need not be in the sequence as patented to any sequence. Paragraph 1 of the Commissioning Certificate by Adani to appellant reads as under :

1. AUTO PREVENTION MODE : On receipt of all four signals (i.e. Pressure Relief Valve Trip + Buchholz Relay Trip + Differential Relay Trip + Transformer Trip/Master Trip) in any sequence in the control panel, system activated, i.e., Oil Drain Valve opened, TCIV Closed & Nitrogen Injection in progress.

This means all the four signals can be received in any sequence on the control panel and the system can be activated. Even the Tender for procurement of NIFPS issued by BHEL, which forms part of the record, shows that the system for prevention (auto mode) can have a different sequence. It says :

(d) Activate the following signals at potential free contacts on terminal bar

(i) HVCB & LVCB Open

(ii) Differential relay Trip

(iii) Buchholz relay trip

20 Dr. Tulzapurkar submitted that the parameters of appellant's technical bid in BHEL Tender were scrutinized by BHEL prior to qualification of appellant's bid and a technical team from BHEL visited appellant's manufacturing facility for witnessing live demonstration test on NIFPS and were fully satisfied with the live demonstration of the system offered by appellant in all respects. Thereafter, BHEL decided to exercise its right to hold a reverse auction wherein both appellant and respondent participated.

21 Therefore, it is quite clear that the finding of the learned Single Judge that so long as appellant is using differential relay alongwith buchholz relay and circuit breaker in any combination even if different from respondent's patent it amounts to infringement is an erroneous conclusion.

22 It is nobody's case that they could claim any monopoly in either the use of the three integers, viz., differential relay, buchholz relay and circuit breaker or a combination of them. Respondent's own case is that their invention lies in the sequence in which they are to be used. According to respondent's patent, the first signal comes from differential relay, thereafter the second signal comes from buchholz relay and then the third signal comes from circuit breaker. Appellant's case is that its system provides for protection as a result of signals generated from any one or more protective devices/integers and tripping of circuit breaker in any combination/sequence and that is the invention for which appellant was granted the patent. The learned Single Judge has not considered the

material on record showing that the three integers were a matter of prior art. Buchholz relay has been in use prior to 1925 and has been referred to in various patents. So also, there are patents relating to circuit breaker and they have been in use since 1879. Differential relay was developed in and around 1933 as could be seen from the pleadings.

23 The non mention of differential relay in appellant's patent and the actual use thereof does not and cannot amount to infringement of respondent's patent. The infringement if at all would happen only if the use of three integers is in the sequence mentioned in claim 1 and 7, as quoted above, of respondent's patent. Appellant was within its rights to use differential relay though not mentioned in its patent because the use was in public domain.

24 In our view, the learned Single Judge has converted respondent's patent into a product patent from a process patent by holding that the use of differential relay by appellant without it being mentioned in appellant's patent amounts to infringement. We have to note that the observation of the learned Single Judge in paragraph 20 of the impugned order that "*While the defendant may be able to claim that the question whether signals can be generated from the differential relay and the Buchholz relay as also the circuit breaker to the control unit can be different from the strict sequence of the plaintiff's patent, would need a full dress trial and leading of evidence*" clearly shows that no injunction could

have been granted at the interim stage. The learned Single Judge has erred in observing that it amounts to infringement so long as appellant uses differential relay alongwith buchholz relay and circuit breaker even in a combination different from respondent.

25 We also have to observe that the interim relief could not have been granted due to the inconsistent stand taken in the plaint. In paragraph 9(e) of the plaint, which is the same as paragraph 9(e) of the interim application, it is stated that *“As a second step, whenever the control unit receives signals from any of the above devices, which means either differential relay or buchholz relay, it generates a control signal to energize a lifting magnet for draining of the combustible coolant fluid and subsequently injects nitrogen gas from the bottom of the electrical transformer”* but elsewhere in the plaint and in the patent, it is stated that *“the system works in a sequence that is first from differential relay, second from buchholz relay and third from circuit breaker”*. The pith and marrow or the substance respondent claims in its patent is based upon signals from differential relay, buchholz relay and circuit breaker in a specific sequence. Even in the written submissions, that respondent had submitted before the learned Single Judge, respondent have stated that it is not essential for differential relay and buchholz relay inputs to work in sequence to activate circuit breaker and a differential relay will activate circuit breaker even without a buchholz relay. This contradictory case of respondent itself would

disentitle it of any interim relief.

26 The learned Single Judge's opinion in paragraph 20 as quoted above that in the absence of reference to differential relay and use of an electrical signal in the claims leading to grant of appellant's patent, *inter alia*, amounts to utilization of a combination amounting to an infringement of respondent's patent, in our view, is incorrect since in the patent of appellant in paragraph (00060), there is a clear reference to wire (control cable) which reads as under :

The control panel 116 also has facility of storing all the data received from the various sources. The auto dialer system is controlled by the microprocessor and other parts. The control panel also records no. of faults in a log sheet and the auto dialer system will send an alert prerecorded test and/or audio message to any default contact numbers automatically. The control panel also receives signals/inputs from the wire (control cable) which is used to detect/any input signal/alert/alarm from the protective device of the transformer, if there is any faulty condition or unhealthy stage of the wire, this will also be detected in our system and will given an audio visual alarm.

Therefore, there is use of electrical signal which reaches the control room. In our view, there is a misreading of appellant's patent resulting in the learned Single Judge forming an opinion that there was an infringement.

27 We should also note that the learned Single Judge has not taken a note or cognizance of appellant's case that respondent has relied on a fabricated document, viz., a drawing allegedly submitted by appellant to Adani, to allege and prove infringement by appellant. The said drawing was

used by respondent to allege that appellant is using the sequence mentioned in the plaint and respondent's patent. Appellant has submitted the drawing which it had submitted to Adani which is different from what respondent has produced. As mentioned earlier, both the documents are different and all the drawings filed by respondent has initials of one Somit Kumar except the drawing on which respondent has relied upon to allege and prove infringement by appellant. It was for respondent to explain the source and the discrepancy.

28 The relief in the nature of injunction is wholly equitable in nature and the party invoking the jurisdiction of the Court has to show that it was at no fault or responsible for bringing about the state of things complained of and that it was not unfair or inequitable in its dealings with the party against whom it was seeking relief. Its conduct should be fair and honest. As held by the Apex Court in ***Gujarat Bottling Co. Ltd. and Ors. V/s. Coca Cola Co. and Ors.***¹, these considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the CPC but also in respect of the party approaching the Court for vacating the injunction already granted in the pending suit or proceedings.

Prima facie, it does appear that the document relied upon by respondent, as a drawing submitted by appellant to Adani, based on which respondent alleged infringement by appellant was of questionable authenticity.

1. (1995) 5 SCC 545

29 Mr. Jagtiani relying upon ***Wander Ltd. and Anr. V/s. Antox India P. Ltd.***² submitted that when there was a *prima facie* case on which respondent could be held entitled to restrain appellant and the interlocutory remedy is intended to preserve in status quo the rights of parties which may appear on a *prima facie* case, the Appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions and, therefore, this Court should not interfere.

30 In our view, for reasons recorded above, it is not possible to arrive at even a *prima facie* view that there was infringement by appellant of respondent's patent. The learned Single Judge has granted injunction to prevent appellant from carrying on business of manufacturing their product. The result of injunction is that appellant will not be able to execute even the orders that it had from BHEL and that would also expose appellant to claim for damages. Appellant won't be able to bid for any projects except where its patent has to be used. Such projects may not be available. Dr. Tulzapurkar submitted that the injunction order resulted in cancellation of existing orders under execution including the orders placed by Adani and disqualification of appellant in ongoing Tenders from NIFPS owing to restrictions on use of differential relay imposed on appellant by the

2. 1990 (Supp) SCC 727

impugned order. In our view, the balance of convenience clearly tilted in favour of appellant.

31 In the circumstances, appeal is allowed and accordingly disposed. Cost to be costs in the suit. Interim application in the appeal, if any, also stands disposed.

32 Appellant waives service of the writ of summons.

33 Written statement to be filed and copy served by 30th June 2023 in view of the ensuing summer holidays.

34 After the judgment was pronounced, Mr. Kane presses for continuation of the stay.

Stay rejected.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)