

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1799 OF 2015
IN
SUIT NO. 448 OF 2012**

CTR Manufacturing Industries Ltd.	...Plaintiffs
<i>Versus</i>	
Sergi Transformer Explosion Prevention Technologies Pvt. Ltd & 2 Ors.	...Defendants

Mr. N. Seervai, Senior Advocate, *a/w Mr. H. Kane, Ms. G. Mistry, Mr. A. Jajoo and Mr. A. Singh, i/b M/s.PKA Associates, for the Plaintiffs.*

Mr. I. Chagla, Senior Advocate, *a/w Mr. P. Sancheti, Senior Advocate, Mr. J. Jeejeebhoy and Mr.K. Sayata, i/b M/s. Bharucha & Partners, for the Defendants.*

CORAM: G.S. PATEL, J
DATED: 28th October 2015

PC:-

1. Mr. Seervai makes an application for urgent ad-interim reliefs in this new Notice of Motion filed by the Plaintiff. The present Notice of Motion relates to a judgment that I pronounced on 23rd October 2015 in the Plaintiff's previous Notice of Motion No.497 of 2014. In that judgment, I held that there was a *prima facie* case of infringement by the 1st Defendant of the Plaintiff's patent.

2. At the request of Mr. Chagla for the 1st Defendant, who said that he intended to test the findings and the judgment in Appeal, I stayed the operation of my order till 23rd November 2015. That four-week period should not be misconstrued: two of those four weeks are the time when this court is in vacation for Diwali. Any shorter stay would necessarily have meant compelling the 1st Defendant to urgently move before the vacation Judge. Given that the matter has been pending since 2010, I thought it appropriate to grant a little further time.

3. Mr. Seervai's application today on behalf of the Plaintiffs is that the order of stay should be recalled. He says that to grant a stay is to permit the 1st Defendant to continue with the infringement. He says that there is now material to show that the 1st Defendant has licenced its patent to a third party for manufacture and sale. This is entirely new material and has not been placed before me at any prior time even though, as I have noted in the 23rd October 2015 judgment that the record runs to about 15000 pages. The Plaintiff claims to have learnt of this but recently. Even if that be so, it is surely material that can be placed before the Appeal Court in any appeal that the 1st Defendant files. The fact that it has not been disclosed before is not reason for me to entertain this Notice of fresh Motion. Indeed, it seems to me to furnish a reason not to do so.

4. Mr. Seervai then says that 'experience' shows that a stay once granted tends to continue. He says this is at least partly because the Appeal Court is overburdened. But that is not a reason to refuse a stay. To the contrary, it seems to me that refusing the

stay would only add to the burden of the Appeal Court. In any case, whether or not to continue the stay is a matter that is now for the Appeal Court to consider. Indeed, I do not see how I can possibly even entertain this Notice of Motion given that it is filed in an already disposed of Notice of Motion.

5. Mr. Seervai may be right to a limited extent when he points out that there is an order of the Supreme Court of 25th May 2012 (and to which I have referred in my judgment) allowing the 1st Defendant, pending the disposal of Notice of Motion No.497 of 2014, sell its product in accordance with the 1st Defendant's own patent but without infringing the Plaintiff's Patent. My granting a stay cannot possibly be read as being contrary to the directions of the Supreme Court, and, in any case, that was an order to which the 1st Defendant consented. Mr. Chagla may in fact be correct in saying that technically that consent or undertaking has lapsed now that the main Notice of Motion has been decided. Nonetheless, in fairness, he makes a statement on instructions that he stands by the statement made to the Supreme Court, viz., that the 1st Defendant will continue to manufacture and sell its product only in accordance with its own patent but without infringing the Plaintiff's patent. This statement is noted. No further orders are possible on the present Notice of Motion.

6. Mr. Seervai agrees that this order disposes of the Notice of Motion. The Notice of Motion is disposed of in these terms.

(G. S. PATEL, J.)