

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 11-03-2020

Judgment pronounced on : 04-06-2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Original Side Appeal No. 117 of 2020

Sun Mobility Private Limited
Represented by its Managing Director
Having Address at
Block No.41/4 &5, Speed Bird House
Connaught Circus, New Delhi - 110 001
And also at
Epsilon Office, A1, First Floor
Kariyammana Agrahara
Yemalu, Bengaluru - 560 037
Correct address of registered office
No.25, Doddanekundi Industrial Area
Mahadevapura Post
Whitefield Main Road
Bangalore, Karnataka - 560048 ... Appellant/5th Respondent

Versus

1. Mr. Arumugam Rajpendra Babu
Son of Mr. Arumugam
No.20F, Vasu Apartments, 92nd Street
18th Avenue, Ashok Nagar
Chennai 600 083 ... 1st Respondent/Petitioner
2. Ashok Leyland Limited
Rep. by Managing Director
No.1, Sardar Patel Road
Guindy, Chennai - 600 032
3. Sun Mobility
Represented by its Chairman
'Maini Sadan', No.38, 3rd Floor
7th Cross Street, Lavelle Road
Bangaluru - 560 001

4. Virya Mobility 5.0 LLP
rep. by its Managing Director
'Maini Sadan', No.38, 3rd Floor
7th Cross Street, Lavelle Road
Bengaluru - 560 001

5. Sun New Energy Systems
Represented by its Chairman
'Maini Sadan', No.38, 3rd Floor
7th Cross Street, Lavelle Road
Bengaluru - 560 001 .. Respondents 2 to 5/Respondents

Appeal filed under Clause XV of the Madras High Court Letters Patent read with Sec.13 of The Commercial Courts Act, 2015 against the decretal order dated 24.01.2020 made in O.A. No. 639 of 2019 in C.S. (Comm.Div) No. 400 of 2019 on the file of this Court.

For Appellant : Mr. M.S. Bharath

For Respondents : Mr. Perumbulavil Radhakrishnan
for Mr. S.P. Vijayaraghavan for R1
Mr. S. Venkataraman for R2
RR3 to 5 were given up as unnecessary parties

JUDGMENT

R. SUBBIAH, J

The first respondent herein, as plaintiff, has filed the suit in C.S. (Comm.Div) No. 400 of 2019 for granting a Permanent Injunction restraining the defendants by themselves, their men, agents, associates, representatives, assigns, subsidiaries, Joint-venture entities, collaborators or any one claiming through them from infringing the plaintiff's patent bearing No.262461, including aiding and/or facilitating infringement in any manner, form or means whatsoever and for costs.

2. As Per the plaint averments, the plaintiff claims to have invented several products and obtained patents for the same in India, United States of America, Australia and Singapore. According to the plaintiff, on 29.03.2006, he submitted an application for patent in Application No. 569/CHE/2006 titled "Electrically Operated Vehicle having a wind operated battery charging system." The Plaintiff also obtained patent for the said product vide No. 262461 issued by the competent authority on 22.08.2014. It is also contended that the plaintiff has periodically renewed and validated his patent before the

Registrar of Patents, Government of India. That apart, the plaintiff also obtained design registration in respect of "A battery housing with connector for easy replacement and recharge of batteries" bearing Patent No. 217786 which was registered on 03.09.2009. It is his contention that he is also periodically renewing and validating the same before the Registrar of Designs, Patent Office, Government of India. It is the contention of the plaintiff that his invention envisages that service stations, petrol stations and other service providers would hold stocks of batteries within the said drawer member for easy replacement/charge of vehicle batteries. Thus, a vehicle needing a battery change or battery recharge would drop into a service station to get the needful done. While so, during January 2019, the plaintiff came to know that the second defendant, along with fifth defendant had advertised for sale mass electric mobility solutions through "quick interchange station" and "smart battery" for automobiles, which according to the plaintiff contains the essential features of the plaintiff's patent No.262461. The Plaintiff also came to know that the defendants 1, 2 and 5 have signed commercial deals and entered into partnership alliance among themselves to provide "quick interchange station" and "smart battery" solutions for mass electric mobility. Therefore, the plaintiff, by notice dated 09.01.2019, called upon the defendants to immediately cease and desist from infringing his patent bearing No.262461 in any manner including aiding and facilitating infringement and use the said patent without authorisation, consent, approval or licence from the plaintiff. The fifth defendant sent a reply dated 15.01.2019 stating that their product was not an electrically operated vehicle and sought time to respond effectively. The first defendant sent a reply on 21.03.2019 stating that they are in the field of designing and developing battery swap and charge stations and related equipment/accessories and thus, the first defendant denied the contents contained in notice dated 09.01.2019. According to the plaintiff, his inventions are tested and available through his authorized and permitted entity M/s. Blacksmith Electric Inventions Private Limited, Chennai, a company registered under the Companies Act, where the plaintiff is a Director (Technical). It is further stated that the plaintiff has also approached various companies to commercially make the patented invention available through them. It is the contention of the plaintiff that the plaintiff has exclusive statutory right to prevent the defendants from exploiting, offering for sale, or selling his patented invention without any agreement, authorization, permission or consent from him. The plaintiff has therefore filed the suit for the relief aforesaid.

3. Pending suit, the plaintiff/first respondent herein has filed an application in O.A. No. 639 of 2019 in C.S. (Comm.Div)

No. 400 of 2019 praying to grant an Interim injunction restraining the respondents/defendants by themselves, their men, agents, associates, representatives, assigns, subsidiaries, Joint-venture entities, collaborators or any one claiming through them from infringing the Petitioner's/plaintiff's patent bearing No.262461, including aiding and/or facilitating infringement in any manner, form or means whatsoever.

4. On notice, the appellant herein/fifth defendant has filed a counter affidavit besides taking out an application in O.A. No. 772 of 2019 praying to grant an interim injunction restraining the plaintiff in the suit from in any manner disseminating, stating, commenting, opining and/or releasing media statements, including in television channels, newsprint and magazines, on-line media, radio and blogs on the dispute between the parties which is presently subjudice before this Court, especially on the likelihood of outcome, whether or not the defendant's infringe the plaintiff's patent and withdraw all such statements made in the past, including the article dated 29th July 2019 and modified on 30th July 2019, published in Express Drives - Financial Times.

5. Yet another application in O.A. No. 827 of 2019 has been filed by the first defendant in the suit praying to pass an order of interim injunction restraining the plaintiff in the suit from giving any statements, interviews or submit any response to any news, media, social media outlet or any legal publication.

6. All the above applications namely O.A. Nos. 639, 772 and 827 of 2019 have been taken up for hearing by the learned single Judge. By order dated 24.01.2020, the learned single Judge directed as follows:-

"25. The applicant/petitioner seeks injunction restraining the respondents/defendants or any one claiming through them from infringing the petitioner's/plaintiff's patent bearing No.262461, including aiding and facilitating infringement, in any manner.

26. In the affidavit, it is averred that the imitation of the plaintiff's patent being used by the defendants 2 to 5, in the vehicle of the first defendant and for the said purpose, the first defendant and defendants 2 to 5 have entered into a Joint-Venture agreement.

27. This Court wants to get the opinion of the Scientific Advisor for the following question of facts.

(i) Whether the essential features of the Patent No.262461 are found in the electrical vehicles

of the first defendant manufactured in collaboration with the defendants 2 to 5?

(ii) Whether or not there are overlap in the Technology or application between the plaintiff's and the defendant's patents, technology or products?

(iii) Whether the system in the plaintiff's patent is completely different from the system of the first defendant's product?

(iv) Whether the concept of battery swapping interchangeable batteries is part of the plaintiff's innovation?

(v) Whether the substantial essential features of the Patent No.262461 claims are found in Patent No.309399?

(vi) Whether Patent No.309399 can be put to use for an Electrical Vehicle dehors the Patent No.262461 by the first defendant?

(vii) Whether by use of Patent No.262461, batteries housed in the modular, slidable and interchangeable drawer like housings in vehicle can be charged only by wind-operated battery charging system alone?

(viii) Whether "SMART BATTERY" solutions for mass electric mobility of Sun Mobility Defendant Nos. 2 to 5 forms part of Patent No.262461?

(ix) Whether the Patent No.262461 is a known prior art of sequential and complimentary invention?

28. The Scientific Advisor shall inquire the parties and submit his report within a period of two months, from the date of commencement of the inquiry.

29. The respondents 2 to 5 are directed to submit statement of accounts from the date of their venture with the first respondent pertaining to the impugned product to this Court every month in a sealed cover, till further orders.

30. Initial remuneration for the Scientific Advisor is fixed as Rs.75,000/- (Rupees Seventy Five Thousand Only) payable by the plaintiff and the defendants equally."

7. Assailing the order dated 24.01.2020 passed by the learned single Judge in O.A. No. 639 of 2019 in C.S. (Comm.Div) No. 400 of 2019, this Original Side Appeal is filed by the fifth defendant in the suit.

8. The learned counsel for the appellant would contend that the appellant is not challenging the appointment of the Scientific Advisor by the learned single Judge. However, it is submitted that such appointment of Scientific Advisor, at the stage of consideration of the application for interim injunction, is unnecessary. According to the learned counsel for the appellant, the learned single Judge ought to have considered the interim application filed by the appellant on merits, instead, the learned single Judge proceeded to appoint a Scientific Advisor to cause an inquiry and to submit a report. It is the contention of the counsel for the appellant that such an appointment is not desirable at the stage of consideration of the application for interim injunction but at the time of deciding the suit for patent infringement. The learned single Judge failed to consider that the appellant has made out a prima facie case for grant of interim injunction against the plaintiff and refusal to grant such an order would cause acute prejudice and hardship to the appellant/fifth defendant in the suit. Further, the learned single Judge, while considering the application for interim injunction, has framed questions which are in the nature of deciding the main suit. The learned single Judge, in the impugned order, has directed the defendants 2 to 5 to submit statement of account without granting the relief of interim injunction which is unwarranted. Thus, it is contended that appointment of a Scientific Advisor is unnecessary at the stage of considering the application for interim injunction. Furthermore, the submission of report by the Scientific Officer will take considerable time and till such time, unnecessarily, the application seeking interim injunction need not be kept pending. Therefore, the learned counsel for the appellant seeks for issuing a direction to the learned single Judge to take up the main suit itself for disposal and in the meantime, if a report is received from the Scientific Advisor, such report shall be taken on file by the learned single Judge to decide the main suit itself.

9. The learned counsel appearing for the plaintiff/first respondent opposed the appeal filed by the appellant by contending that the plaintiff/first respondent herein is the holder of a patent. The Plaintiff/first respondent herein has filed the suit and sought for interim protection. The appellant/fifth defendant has also taken out an application seeking an injunction against the plaintiff/first respondent herein. Therefore, in order to effectively adjudicate such rival claim and having regard to the technicalities involved in the dispute between the parties, the learned single Judge thought it fit to appoint a Scientific Advisor to cause an inquiry and to submit a report. The object of appointing the Scientific Advisor is to decide the interim application on merits and therefore, the argument of the counsel for the appellant/fifth defendant

that the interim application can be kept pending and the main suit itself can be taken up for trial cannot be countenanced. The learned counsel for the plaintiff/first respondent therefore prayed to dismiss the appeal to enable the learned single Judge to take up the applications filed by the plaintiff as well as the defendants for interim relief.

10. We have heard the counsel for both sides and perused the materials placed on record. The plaintiff has filed the suit for grant of permanent injunction against the defendants by alleging that they are attempting to infringe his patented product. The suit was instituted under the provisions of Section 7 of the Commercial Courts Act, 2015 which provides for speedy resolution of the dispute inter se between the parties. Section 14 of the said Act stipulates that all endeavour must be taken to dispose of any application or suit filed under the Act within a period of six months.

11. In the present case, the plaintiff/first respondent has filed the suit for the relief of injunction. Pending suit, the plaintiff/first respondent has also sought an order of interim injunction. On notice, the appellant herein/fifth defendant has filed a counter affidavit besides taking out an application in O.A. No. 772 of 2019 praying to grant an interim injunction restraining the plaintiff in the suit from in any manner disseminating, stating, commenting, opining and/or releasing media statements, including in television channels, newsprint and magazines, online media, radio and blogs on the dispute between the parties. Similar application has been filed by the first defendant in the suit for grant of an order of injunction restraining the plaintiff from giving any statements, interviews or submit any response to any news, media, social media outlet or any legal publication. The learned single Judge considering the averments made in the application seeking interim injunction by the plaintiff as also the application filed by the first defendant as well as the fifth defendant for similar relief, in para No.11 of the order, recorded a specific finding that the claim of the plaintiff relating to patent is with respect to an electrical vehicle with a wind operated battery charging system, but the product over which the defendants made a claim is with respect to a portable and standardized charging system. Thus, the learned single Judge observed that the vehicle and charging station over which the plaintiff and defendants made a claim relates to two different products. Having arrived at such a conclusion, taking note of the intricacies involved in adjudicating the dispute inter se between the parties, the learned single Judge, taking aid to Section 115 of the Patents Act thought it fit to appoint an individual Scientific Advisor to assist the Court for an effective adjudication. It is in this direction, the learned single Judge passed the order appointing

a Scientific Advisor, which is impugned in this appeal.

12. On perusal of the order passed by the learned single Judge, we find no infirmity in such order. The appellant has no qualm or quarrel in the appointment of Scientific Advisor by the learned single Judge. However, the grievance of the appellant is that since the Scientific Advisor may take time to submit a report before this Court, till such time, the applications seeking interim injunction shall be kept pending and the suit shall be taken up for trial and in the meantime if a report is filed, it shall be taken into consideration for the purpose of deciding the suit. Such a prayer made by the appellant in this appeal cannot be countenanced. Admittedly, the appellant has no grievance with respect to appointment of the Scientific Advisor. While so, the prayer now made by the counsel for the appellant to issue a direction to the learned single Judge to keep the interim applications pending and to take up the suit for hearing has to be decided only by the learned single Judge. It is open to the appellant to approach the learned single Judge seeking such prayer to keep the applications for interim injunction pending till such time a report is filed by the Scientific Officer and to take up the main suit for hearing.

13. In the result, the order dated 24.01.2020 made in O.A. No. 639 of 2019 in C.S. (Comm.Div) No. 400 of 2019 is confirmed and the Original Side Appeal is dismissed. No costs. The learned single Judge shall take up the applications in O.A. Nos. 639, 772 and 827 of 2019 and to dispose of them on merits and in accordance with law as expeditiously as possible.

Sd/-
Assistant Registrar(CS VIII)

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सत्यमेव जयते
Sub Assistant Registrar

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To
The Sub-Assistant Registrar
Original Side
High Court, Madras

OSA No. 117 of 2020

CP (CO)
RMP (01/10/2020)