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

Date of Decision: 01.12.2021

+ RFA(OS) (COMM) 6/2021 & CMs 28068-69-70-71/2021

COMMUNICATION COMPONENTS ANTENNA INC.

..... Appellant

Through Mr.Rajeev Virmani, Sr. Adv.
with Mr.Mohit Goel,
Mr.Sidhant Goel, Mr.Aditya
Goel, Mr.Deepankar Mishra
and Ms.Apoorva Murali, Advs.

versus

**MOBI ANTENNA TECHNOLOGIES (SHENZHEN) CO.
LTD. & ORS.**

..... Respondents

Through Mr.Shantanu Tyagi, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. Reply affidavits have not been filed by the respondents despite opportunity having been granted. Learned counsel for the respondents prays for further time to file reply affidavits. However, keeping in view the fact that notices had been issued in the present matter on 26th August, 2021, this Court is of the view that the respondents have had sufficient time to file reply affidavits. Accordingly, the request for additional time to file reply affidavits is declined.

2. It is pertinent to mention that the present appeal has been filed challenging the judgment dated 10th August, 2021 passed by the learned Single Judge in C.C. No.38 of 2012 filed in CS(COMM) No.977 of 2016, to the extent that it invalidates the Appellant's patent, numbered Indian Patent Number IN240893 (hereinafter, "IN240893"), on the ground under Sections 64(1)(h) and (k) of the Indian Patents Act, 1970 (the "Act 1970"), while adjudicating, and decreeing, the Counterclaim.

3. Learned senior counsel for the Appellant states that there was no pleading with respect to the grounds of Section 64(1)(h) or Section 64(1)(k) of the Act, 1970 in the context of Section 10 of the Act, 1970. He states that no issues were framed or evidence led for the same. He points out that this is especially relevant for the ground of Section 64(1)(h) since proof of the same statutorily requires evidence of "*a person possessing average skill in, and average knowledge of, the art to which the invention relates*". He also states that the learned Single Judge has erroneously treated the patent in question as a process patent.

4. Per contra, learned counsel for the respondents states that the ground for revocation of patent under Sections 64 (1)(h) and 64(1)(k) of the Act, 1970 in the context of Section 10 of the Act, 1970 are questions of law and not questions of fact and arise from the terms of the Patent itself. He, however, admits that no issue with regard to Sections 64 (1)(h) and 64(1)(k) of the Act, 1970 in the context of Section 10 of the Act, 1970 had been framed by the learned Single Judge. He undertakes that in the event the matter is remanded to the

learned Single Judge for reconsideration of revocation of patent under Sections 64 (1)(h) and 64(1)(k) of the Act, 1970 in the context of Section 10 of the Act, 1970, the respondents shall neither amend their pleadings nor lead any additional evidence. He also admits that the patent which is the subject matter of the suit is both a process and product patent.

5. It is settled law that the Civil Procedure Code is an elaborate codification of the principles of natural justice to be applied to civil litigation. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the Court for its consideration. The object of issues is to identify from the pleadings the questions or points required to be decided by the Courts so as to enable parties to let in evidence thereon. (See ***Bachhaj Nahar vs. Nilima Mandal & Anr. (2008) 17 SCC 491***).

6. In the present case, respondent no.1 had pleaded Section 64(1)(e), Section 64(1)(f) as well as Sections 3(d) and 3(f) read with Sections 64(1)(d) and 64(1)(k) of the Act, 1970 as grounds for revocation. Though the impugned judgment upholds the validity of IN240893 on all grounds pleaded in the Counterclaim and issues framed, yet it invalidates the Appellant's patent 'IN240893' under Sections 64(1)(h) and (k) of the Act, 1970 in the context of Section 10 of the Act, 1970.

7. This Court is of the opinion that learned Single Judge could not have entertained grounds for revocation on which issues had not been framed. Order XIV of Code of Civil Procedure (in short 'the Code') permits propositions of law and/or fact to be framed as issues. Order XIV Rule 3(c) of the Code gives power to the Court to even frame issues on the basis of contents of documents alone produced by either party. Thus, Courts are not confined to pleadings alone for fixing issues. Courts have complete freedom to look and draw upon other materials in Order XIV Rule 3.

8. Accordingly, even if the respondents submission is to be accepted, the learned Single Judge could not have revoked appellants' patent on the grounds of Section 64 (1)(h) or 64(1)(k) of the Act, 1970 in the context of Section 10 of the Act, 1970 without framing an issue to that effect.

9. Undoubtedly, the provisions of the Code are so elaborate that many a time, fulfillment of the procedural requirements of the Code may itself contribute to delay. But any anxiety to cut the delay or further litigation should not be a ground to flout the settled fundamental rules of civil procedure.

10. Consequently, the impugned judgment and decree are set aside to the extent challenged in this Appeal, and the matter is remanded to the learned Single Judge to decide the matter afresh with regard to Sections 64(1)(h) and 64(1)(k) in context to Section 10 of the Act, 1970, which is paragraphs 28 to 34 of the impugned judgment. The learned Single Judge shall frame an additional issue with regard to the revocation of the appellant's patent on the ground of Section 64 (1)(h)

and 64(1)(k) in context to Section 10 of the Act, 1970. All pleas of the Parties in relation to this additional issue to be framed are kept open, and the learned Single Judge shall decide the same in accordance with law. However, the respondents/defendants are bound by the statement that they will neither amend their pleadings nor lead any additional evidence. The parties are directed to appear before the learned Single Judge on 15th December, 2021. With the aforesaid directions, the present appeal stands disposed of.

MANMOHAN, J

NAVIN CHAWLA, J

**DECEMBER 1, 2021
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