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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 13th February, 2024

+ CS(COMM) 171/2022 and I.A. 3474/2024

NOKIA TECHNOLOGIES OY

..... Plaintiff

Through: Mr. Pravin Anand, Ms. Vaishali R
Mittal, Mr. Siddhant Chamola & Ms.
Pallavi Bhatnagar, Advs. (M:
9871736336)

versus

VIVO MOBILE COMMUNICATION CO LTD &
ORS.

..... Defendants

Through: Mr. Saikrishna Rajagopal, Ms. Julien
George, Ms. Anu Paarcha, Mr. Arjun
Gadhoke, Mr. Aniruddh Bhatia, Mr.
Avijit Kumar, Ms. N. Parvati, Advs.
for D-1 to 3.

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. In the present patent infringement suit, the Plaintiff- Nokia Technologies OY (*hereinafter 'Nokia'*) has asserted that the suit patent, i.e. IN 259932 titled '*Arranging Handover*' which related to the field of mobile telecommunications is being infringed upon by the Defendants.
3. According to Nokia, the above suit patent is being infringed by the Defendants in the mobile phones and cellular systems are that being manufactured, assembled or imported by the Defendants. In support of this claim, Nokia has placed on record test reports capturing the results of testing performed on the Defendants devices both in-house by the Plaintiff and by



an independent third-party entity, Sasken, at its testing facility. Further, Nokia has provided claim charts based on teardown analyses of the Defendants' devices, mapping claim elements to technical features present in said devices.

4. The present suit has been filed against four Defendants, the list of all the Defendants is set out below in a tabular form:

S. No.	Name of the Defendant	Defendant No. (As per Memo of Parties)
1	Vivo Mobile Communication Co., Ltd	Defendant No. 1
2	Vivo Mobiles India Private Limited	Defendant No. 2
3	Iqoo Mobile India Private Limited	Defendant No. 3
4	Haicheng Mobile (India) Private Limited	Defendant No. 4

5. Initially, the present suit was list before a Coordinate Bench of this Court. However, on the first date of hearing, vide order dated 16th March, 2022, the submission of Id. Counsel for the Plaintiff was recorded that the suit patent in the present suit was also part of the dispute in **CS (COMM) 304/2021**, which was being heard before this Court. Accordingly, the present suit was listed before this Court on 21st March, 2022 for further proceedings. Thereafter, vide order dated 24th May, 2022, this Court directed the present suit to be listed along with **CS(COMM) 304/2021** for hearing the injunction applications.

6. Similar applications seeking injunction in **CS (COMM) 303/2021**, **CS (COMM) 304/2021** and **CS (COMM) 171/2022** were consolidated and submissions from all parties on the injunction applications were heard at length, in camera. A separate link was used for hearing of all Vivo suits for all the hearings, to maintain confidentiality between the parties. Considering



that issues of infringement, invalidity, essentiality, FRAND compliance, etc. were all raised, the Court had heard submissions of the parties over the course of nine hearings from 18th May, 2022 to 11th November, 2022.

7. In the *interregnum*, vide judgement dated 3rd July, 2024, the 1d. Division Bench in ***Nokia Technologies OY v. Guangdong Oppo 2023:DHC:4465-DB***, directed *pro-tem* deposit in respect of the connected suit ***CS (COMM) 303/2021***. The said judgement was challenged before the Supreme Court by means of a Special Leave Petition. However, the said SLP was dismissed vide order dated 4th August, 2023 in ***SLP(C) No. 15938/2023*** titled ***Guangdong Oppo Mobile Telecommunications v. Nokia Technologies OY*** by the Supreme Court.

8. After the decisions of the 1d. Division Bench and the Supreme Court, vide order dated 6th September, 2023 detailed submissions were heard in respect of all the four connected suits. After hearing the parties, and considering the thorough and technical nature of the interim injunction hearings and submissions, as well as the *pro-tem* security provided for the Plaintiff in terms of the judgement of the 1d. Division Bench, this Court queried 1d. Counsels for parties, to seek instructions if they would agree to proceed to an expedited trial in all the four connected suits. The Court also clarified in the expedited trial proposed by the Court, the evidence would be recorded before the Court itself using live transcription technology, which would result in speedier recording of cross-examination. Accordingly, on the said date i.e., 6th September, 2023, the judgement in the interim injunction applications in all the four connected suits was de-reserved.

9. After the judgement in the injunction applications was de-reserved, the present suit as also all the connected suits were listed before this Court



on 6th October, 2023, 31st October, 2023 and 28th November, 2023 to seek clarity with respect to the position of all parties for proceeding to an expedited trial. However, when the present suit and also all connected suits were taken up for hearing on 29th November, 2023, on the issue of ‘whether the trial would be for fixing a global FRAND rate or a FRAND rate only for India’ there was a dispute between both the parties and no consensus could be arrived at between the parties. Consequently, judgement in all the interim injunction applications was reserved and the Plaintiffs were directed to place on record an updated Form-3 in respect of all the suit patents.

10. After the judgement was reserved in the interim injunction applications, there was another development in the suit, which resulted in a piquant situation. Vide judgement dated 28th November, 2023 the Chongqing No. 1 Intermediate People’s Court, China delivered a judgement in a separate proceeding and determined a Global FRAND rate for Nokia’s portfolio. Consequently, an application bearing ***I.A. 25355/2023*** was moved by the Plaintiff seeking the issuance of directions for placing on record the fully unredacted version of the decision dated 28th November, 2023 passed by the Chongqing No. 1 Intermediate People’s Court, China. The said application was listed before this Court on 18th December, 2023 and directions were issued to both Nokia and Oppo to obtain unredacted copies of the decision dated 28th November, 2023 passed by the Chongqing No. 1 Intermediate People’s Court, China from their Chinese lawyers and place the same on record as the same would have a material bearing on the decision to be rendered in the applications where judgement is reserved. Thereafter, vide order dated 21st December, 2023, this Court recorded that both parties had submitted the unredacted copy of the judgement of the Chinese Court,



which had determined a Global FRAND rate.

11. Subsequently, on 24th January, 2024, the matter was mentioned before the Court by the Id. Counsels for both parties that a settlement has been arrived at between the parties in the present suit. After being informed of this development the Court listed the present matters for directions on 30th January, 2024. On the said date, the following order was passed:

7. Today, both parties agree that the disputes in CS(COMM) 303/2021 & 304/2021 have been amicably resolved. The terms of settlement have been exchanged between the parties, but the settlement agreement is yet to be executed between the parties. However, the parties wish to move an application in this regard.

8. Regarding CS(COMM) 162/2022 & 171/2022, the position is that no settlement has been reached as on date. On a specific query from the Court whether it should proceed to pass judgment, Mr. Pravin Anand, Id. Counsel for the Plaintiffs clarifies that as far as the Plaintiffs are concerned, the instructions are that since there is no settlement as on date, the judgment may be pronounced by the Court in CS(COMM) 162/2022 & 171/2022. On the other hand, Mr. Saikrishna requested that the matter may be deferred for a short period to allow him time to receive final instructions.

9. Id. Counsel for the Plaintiff submits that there is no objection to the matter being deferred by a couple of weeks.

10. Accordingly, list the matters on 26th February, 2024 for receiving settlement application in CS(COMM) 303/2021 & 304/2021 and for receiving final instructions in CS(COMM) 162/2022 & 171/2022.

12. However, today Id. Counsels for all the parties submit that all the connected suits between the parties have been settled and a settlement



application has also been filed.

I.A. 3474/2024 (u/O XXIII Rule 1 and 3 CPC)

13. This is an application under Order XXIII Rule 1 and 3 CPC seeking to place on record the fact that the disputes between the parties have been resolved vide a Patent License Agreement and Litigation Settlement Agreement (*hereinafter 'settlement agreement'*) which is a global settlement of disputes between the Nokia and Vivo in respect of SEP as well as implementation patent disputes. The terms of the settlement are set out in paragraph 6 of the present application which is extracted herein below:

“6. The parties, without prejudice to their rights available under law, are filing the present application, seeking disposal of the following proceedings:

(i) The Plaintiff agrees to give up its prayer for permanent injunction, damages, rendition of accounts etc., as prayed for in the paragraph 67 of plaint in the present proceedings. Parties agree that the present suit can be accordingly disposed of.

(ii) The Defendants agree to terminate and withdraw the counterclaim No. CC(Comm) 12 / 2023 that was filed in the present proceedings relating to IN 259932 and all claims made in the suit with respect to the invalidity of the Plaintiff's suit patent.

(iii) Parties agree that in view of the settlement arrived between them, the Plaintiff is not pressing for interim relief, as requested in the application under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 being IA 4267/2022, orders on which were reserved finally on 29th November 2023.

(iv) Both parties agree that the Litigation



Settlement Agreement entered into between the parties shall not be construed as an admission of any claims made by one party against the other party, which term includes the said parties' affiliates, subsidiaries, group companies etc.

(v) Parties agree that the present application is without prejudice to their rights and interests, and neither party is barred from instituting fresh claims of infringement of implementation patents, or re-agitating the claims made in the abovementioned proceedings, save and except a written agreement between the parties which prevents them from doing so."

14. The present application is signed by the authorised signatories of the Plaintiff as also by the authorised signatories of Defendant Nos. 1 to 3. Ld. Counsel for the parties have also signed the present settlement application. The application is supported by affidavits of the respective parties.

15. In view of the settlement being arrived at between the parties, the suit as also the counterclaim is dismissed as withdrawn in terms of the Litigation Settlement Agreement. The parties shall be bound by the terms and conditions of the said Litigation Settlement Agreement.

16. Ld. Counsel for the Plaintiff has prayed for the refund of Court Fee, considering the present suit has been resolved. However, considering the number of hearings and the detailed nature of the hearings, the prayer for refund of Court Fee is not acceded to.

17. In these matters, a substantial number of confidential documents have been filed either in sealed covers or otherwise. The same may also have been scanned with the electronic record. Considering the fact that the suit is now being withdrawn, the parties are permitted to jointly approach the



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Dealing Assistant through Counsel for deletion of electronic record relating to confidential documents. Further, all the hard copies of the confidential documents be returned to the respective parties through Counsel and undertaking be recorded that the said documents have been returned to the parties.

18. Considering that the suit is being withdrawn, all the pending applications are also dismissed as infructuous. The next date of hearing is also cancelled.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 13, 2024

Rahul/am

(corrected & released 21st February, 2024)