

Order below Exh.16

1. Heard the Ld. Advocates for the parties. Read this application and papers on record. Ld. Advocate for the defendant no.1 has filed this application for rejection of plaint under O.7,R.11 of C.P Code on the ground for want of cause of action, for non compliance of the statutory requirement applicable to the plaint verification and for non payment of court fees. The plaintiff has filed its reply vide Ex.19 and has denied the contentions of the application.
2. Plaintiff's case in nutshell is that his company is a limited company. Plaintiffs the assignee of Indian Patent no. 282429 (Plaintiff's patent) titled '***Novel Agricultural Composition***' which was granted on **11th April'2017**. Defendant's company is situated at Vadodara. They have infringed the plaintiff's patent rights. Hence, in order to protect their patent rights, the plaintiff has filed this present suit against the defendants praying for permanent injunction and claiming damages under section 108 of Patent Act, 1970.
3. Ld. Advocate for the defendant Shri. Anand Majhumdar has filed this application. He has cited judgments in support of his

application which were duly considered at the time of deciding this application. His arguments are summarized as under-

- Plaintiff has filed the present suit only on the basis of assumption. Considering the plaint and papers produced by the plaintiff, there is no cause of action for survival of this suit.
- The documents submitted by the plaintiff do not reflect acquisition of any patent right by the plaintiff.
- Plaintiff has miserably failed to show his proprietary right and so the question of infringement does not arise at all.
- The authorized person for the plaintiff has not signed the verification on page no.43 of the plaint. Only the affidavit bears his signature. Hence, as per O.6, R.15 of C.P Code, the plaint is not presented as per law.
- Plaintiff has filed similar suit against Mitul Industries at Chennai's court without jurisdiction. The plaintiff has filed present suit in order to get the relief which they failed to obtain against Mitul Industries.

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- Plaintiff has filed the present suit without the payment of requisite court fees and hence the suit is also required to be rejected on this ground.
- Ld Advocate for the defendant at the time of arguments has placed his reliance on following citations-

- 1. T. Arivandandam v/s T.V Satyapal and Ors, MANU / SC / 0034 / 1977.**
- 2. R. K Roja v/s U. S Rayudu and Ors. MANU / SC / 0751 / 2016**
- 3. Rajpal Singh v/s Sunderlal, WP No. 14349 of 2014.**

4. Ld. Sr. Advocate Shri. Mihir Thakor and Ld. Advocate Shri.Tushar Vyas for the plaintiff have strongly objected this application. They have filed reply to this application vide Exb.19. They have denied the averments made in this application. Their arguments to reject this application are as under -

- One of the reasons for rejection of the suit was due to non payment of requisite court fees. However, it is admitted that the plaintiff at the time of filing of this suit had not paid the court fees. But, eventually the court fees were duly

deposited by the plaintiff. Hence, this ground is no longer valid for rejection of the plaint.

- The plaintiff has filed this suit under the Commercial Courts Act, 2015. As per the section 16 read with schedule more particularly 4(B)(ii) of the act, plaint is required to be filed along with an affidavit in the manner and form prescribed in the schedule. As per the record, plaintiff has filed Statement of truth along with verification as per the schedule. This verification bears the signature of the authorized person. The plaintiff has duly complied with the provisions codified under the commercial act. Even otherwise, this ground is not covered under O.7, R.11 of C.P code for rejection of plaint.
- Plaintiff has filed this suit in its capacity as an assignee of Patent no.282429. This fact has been duly disclosed in the plaint. The suit has been filed as a result of defendant's infringement of plaintiff's patent rights. Hence, as discussed in detail in the plaint, there is a cause of action that gives birth to this suit.

- The cause of action in the present suit and the the cause of action in the suit filed against Mitul Industries are entirely different. Considering section 48 of The Patent Act, plaintiff has right to file the present suit.
- The present application has been filed by the defendants has no merits and has been intentionally filed with a view to defeat / delay the grant of interlocutory relief sought by the plaintiff. Hence, this application is required to be rejected with cost.

5. On considering apparent facts on record, it is necessary to decide whether plaint is required to be rejected or not. In order to decide this application, it would be meaningful to refer Order-7,Rule 11 of CPC as under-

Rejection of plaint- The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provision of Rule 9.

5.1 It is well settled position that while considering the application under Order 7, Rule 11 of C.P.C, court is not required to take into consideration the defense set up by the defendants in his written statement. The question, whether the plaint is barred by law is to be decided by taking into consideration the averments made in the plaint along with the supporting documents produced by the plaintiff. While considering this application, the strength and weaknesses of the plaintiff's case is not to be examined. This law has been clearly settled in case of **Chottanben v/s Kiritbhai Jalkrishnabhai Thakker, S.C (2018)(O)AIJEL-S.C.62061.**

6. Considering the submissions by the Ld. Advocates for the parties in light of the above legal provision, the point that emerges for my

consideration is the, **“Whether the plaint is required to be rejected under O.7, R.11 of C.P Code.”**

7. The major grounds for rejection of plaint raised by the Ld. Advocate for the defendant are -

- (a) Requisite court fees not paid.[o.7,R.11(b)]
- (b) Verification in plaint not signed by the authorized authority and hence, plaint is defective.[O.6,R.15]
- (c) Plaint does not disclose cause of action. [O.7,R.11(a)]

8. Court fees:

8.1 Considering the records, it appears that at the time of filing of the suit court fee was not paid. Plaintiff has filed an undertaking vide exb.6 stating that due to non availability of stamp due to COVID 19 pandemic situation, he could not affix the court fee stamp at the time of filing of this suit. He further submitted that once normalcy is restored, he would pay the requisite stamp. Considering the record, plaintiff had affixed the necessary court fee stamp Ex.18 dated 11/09/2010. Hence, it is admitted fact that no court fee is due to be paid on part of the plaintiff. Hence, this argument advanced by the Ld. Advocate for the defendant is not tenable for rejection of plaint due to insufficient stamp.

9. Defective Verification:

- 9.1 Defendant has raised the ground that the plaint is also required to be rejected due to defective verification. He has submitted that on page no. 43 of plaint does not bear the signature of authorized authority, which is mandatory as per O.6, R.15 of C.P Code.
- 9.2. On perusal of the plaint on page no.43, admittedly the authorized person has not signed this verification but on the same page on affidavit, the authorized person has signed. Further, along with plaint, plaintiff has filed statement of truth as per O.6, R.15(a) of C.P Code. This document also consists of verification which has been duly signed by the authorized signatory.
- 9.3. Commercial Courts Act, section 16 pertains to **Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.** Amendment was made in O.6, R.15 and effect of amendment was reflected by adding O.6, R.15(A) in Schedule which is reproduced as under -

“15(A): Verification of pleadings in a commercial dispute.—

(1) Notwithstanding anything contained in Rule 15, every pleading in a commercial dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule.

(2) An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorized by such party or parties.

(3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise.

(4) Where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.

(5) The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.”

9.4. On considering the above legal provisions, the plaintiff has placed on record the statement of truth followed by the verification as per the above provision. This verification is duly signed by the authorized person. This fact has not been disputed by the Ld. Advocate for the defendant. Further, the verification on page no. 43 is followed by the affidavit which has also been signed by the authorized person. Hence, this could be treated as a mere irregularity. In this regard, Hon'ble Apex court in the case of Narayan Swamy v/s C.P Thirunavukkarasu, AIR (2000) S.C, pg.694 has held that a defect in verification is merely an irregularity and not illegality. Such defect is therefore curable. It is not fatal and plaint or petition cannot be dismissed on this ground. It can be cured at any stage of the proceedings.

9.5. Further, on considering the provision of O.7,R.11, this ground is not available for rejection of plaint. Hence, on the basis of above discussion, the plaint cannot be rejected on this ground as well.

10. Non disclosure of cause of action in plaint:

10.1] The Ld. Advocate for the defendant has also raised the ground for rejection that the plaint does not disclose any cause of action. On considering the plaint and its supporting documents, following facts emerges as under -

- Plaintiff is the assignee of Indian Patent no.282429 titled "Novel Agricultural Composition" granted on April 11th, 2017.
- Patent Certificate 11/4/2017 is in the name of Deepak Pranjivan Shah (Mark.4/1)
- Mr. Deepak Shah had issued Power of attorney in the name of Deepak Mundra to represent the company (Sulphur Mills Ltd) in any court of law on his behalf. This P.O.A dated 12/6/2019 is on record vide mark 4/18.
- The present suit is filed by Deepak mundra on behalf of Sulphur Mills Ltd (Plaintiff Company) on 28/8/2020. (Exb.1).
- As per the plaint, the cause of action for filing this suit arose when plaintiff learnt about the infringement by the defendants. Further, defendants denied the infringement and by their response dated 24/7/2020. In order to protect their patent rights, the plaintiff company has filed this suit.

10.2. It would be meaningful here to refer the ratio laid down in in **P.S.Valand & Ors V/s Hasmukhbhai Bachubhai Parsana 2017 (3) GLR Page 2516** more particularly in para no. 15, it was observed that court has to consider only the averments made in the plaint and it has a reference to a cause of action which is again a bundle of facts and therefore, in order to exercise

discretion under section O.7 R.11 only the averments in the plaint are to be considered. At the same time the courts are obliged to consider and read in a meaningful manner the averments in the plaint, particularly the cause of action and consider whether it is hit by any statutory provision including the limitation.

10.3. Thus, from the above listed points it apparently appears that, the cause of action in the present suit is due to the infringement of the plaintiff's patent by the defendant. Plaintiff has placed on record the copy of patent certificate vide mark.4/1. He has also placed on record a copy of P.O.A vide Mark.4/18 to justify as to how Deepak Mundra was assigned to represent this suit on behalf of the plaintiff company. Thus, on considering the plaint and papers produced by the plaintiff, this court is satisfied that there is a cause of action disclosed in the plaint behind filing of this suit.

10.4. Further, the defendant has submitted that plaintiff is suffering from patent defects and plaintiff has produced false documents for which this suit is not maintainable. However, the detail scrutiny of patent and authentication of documents calls for in depth evidence. Prima facie on considering the plaint and supporting

documents, the plaintiff has justified that the plaint discloses cause of action that resulted in filing of this suit. Hence, the ground raised by the defendant that the plaint does not disclose cause of action does not sustain after the above discussion.

11. Another ground raised by the Ld.Advocate for the defendant is that the plaintiff has filed similar suit against Mitul Industries. Plaintiff aims at getting the relief which they could not obtain against Mitul Industries. Hence, this suit should be rejected.

11.1. However, considering the record, it prima facie appears that the cause of action as well as the parties in the suit filed against Mitul industries are entirely different from the present suit. Further, Section 48 of The Patents Act, 1970 pertains to the Rights of Patentees. As per this right, the plaintiff is entitled to file this suit against the defendant as he is using the product manufactured by the plaintiff. Since, there is a cause of action the present suit against the defendant is sustainable. Thus, this ground is not valid ground for rejection of plaint.

12] Conclusion:

Hence, as per the above discussion, this court is satisfied that the plaintiff has duly paid the requisite court fees, defective verification is merely an irregularity and not illegality, the plaint discloses the cause of action for filing of this suit. Taking note of the above discussed legal principles, the citations referred by the Ld. Advocate for the defendant are not helpful for rejection of plaint. Hence, on the basis of these summarized definite conclusion, this plaint cannot be rejected. The grounds raised by the defendants for rejection of plaint as in O.7,R.11 are not tenable. Hence, I pass the following order -

:-ORDER:-

- The application filed by the defendants vide exb.16 for rejection of plaint is hereby rejected.
- No order as to costs.

Order pronounced on 25th of February'2021

Date:25/02/2021
Place:Vadodara

(PIYUSH MAHENDRABHAI UNADKAT)
14th Additional District Judge
Vadodara.
CODE NO. GJ00716