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

+ **CS(COMM) 380/2025**

SUN PATENT TRUST

.....Plaintiff

Through: Mr. Pravin Anand, Ms. Vaishali R. Mittal, Mr. Siddhant Sharma, Mr. Gursimran Singh and Ms. Geetanjali, Advs.

versus

VIVO MOBILE COMMUNICATION CO. LTD. & ORS.

.....Defendants

Through: Ms. Julien George, Mr. Arjun Gadhoke, Mr. Aniruddh Bhatia and Ms. Alka Bisht, Advs.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

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08.05.2025

I.A. 11720/2025-By D-1 and 2 seeking correction in order dated 25.04.2025

1. By virtue of the present application under *Section 152* of the Code of Civil Procedure, 1908 (**CPC**), the defendant nos.1 and 2 (**defendants**) seek correction in order dated 25.04.2025 in terms of paragraph 11 of the present application, reproduced hereunder:

“11. In light of the above, it is respectfully prayed that this Hon’ble Court may be pleased to clarify and correct the order to state that the Court has not expressed any opinion or formed any view on whether the plaintiff has complied with its FRAND obligation or that the Suit Patents are SEPs, and to carry out the necessary corrections in paragraph 2 accordingly.”

2. At the outset, this Court notes that since the present application is

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CS(COMM) 380/2025

Page 1 of 5



one under *Section 152* of the Code of Civil Procedure, 1908 (**CPC**), it is imperative for learned counsel for the defendants to point out as to which is the correction of clerical or arithmetical mistakes or errors which have arisen from accidental slips or omissions in the order dated 25.04.2025.

3. As per the case set up by the defendants, by way of the present application as also by way of the arguments advanced by the learned counsel for the defendants, though they seek ‘correction’ of the order dated 25.04.2025, but in fact, they seek modification/ clarification thereof, as according to them, it can be misunderstood that the plaintiff is the owner of the SEP’s and has complied with the FRAND obligations therein, even though, *admittedly*, the present suit is relating to the said issues only, and particularly, since according to learned counsel for the defendants, there is a chance of the plaintiff miss-construing the statements recorded in paragraph 2 of the order dated 25.04.2025, apprehending a change of change of roster in future.

4. This Court has heard the learned counsel for the defendants and perused the order dated 25.04.2025 as well.

5. In view of the aforesaid, the defendants are in fact seeking an interpretation of paragraph 2 of the order dated 25.04.2025, as reproduced hereunder:-

*“2. Considering the averments made therein, especially as the plaintiff is also seeking an ad-interim relief; and also since the present suit is involving a Standard Essential Patent (SEP) of which the plaintiff is the owner; and the plaintiff has complied with Fair Reasonable and Non-Discriminatory (FRAND) obligations, and in view of the judgments passed by the Hon’ble Supreme Court in **Yamini Manohar v. T.K.D. Krithi** 2024 (5) SCC 815 and followed by a Division Bench of*



*this Court in **Chandra Kishore Chaurasia vs. R. A. Perfumery Works Private Limited** 2022:DHC:4454-DB, the plaintiff is exempted from instituting pre-litigation mediation.”*

6. Prior to adverting to adjudicating the present application on merits, let it be clear that the present suit has been instituted by the plaintiff for “*permanent injunction restraining infringement of rights vested in registered patent numbers in 465453, in 331203 and in 418051 along with damages, rendition of accounts and, delivery up, and a declaration that the plaintiff has complied with its FRAND obligations in respect of its standard essential patents, that the defendants are unwilling licensees*” against the defendants and the aforesaid order was passed on the very first day of its listing in an application under *Section 12A* of the Commercial Courts Act, 2015, read with *Section 151* of the CPC (I.A. 10393/2025) filed by the plaintiff seeking exemption from pre-litigation mediation in terms of the averments made by the plaintiff therein.

7. This Court finds that the relief(s) sought by the defendants herein are well beyond the realm of *Section 152* of the CPC, particularly, since based on the averments made therein, there is/ are no correction of clerical or arithmetical mistakes or errors which have arisen from accidental slips or omissions pointed out anywhere. The defendants herein are, thus, calling upon this Court to correct something non-existent.

8. In fact, learned counsel for the defendants during the course of her arguments today, has also been unable to point out anything requiring correction which is under the realm of *Section 152* of the CPC. In fact, she herself admitted that the defendants herein on the contrary are actually seeking modification/ clarification of the said order dated 25.04.2025 by

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CS(COMM) 380/2025

Page 3 of 5



way of the present application. In effect, the defendants are not asking this Court to rectify any correction in the order dated 25.04.2025, since there is none, but, in fact, is actually by way of the present 'Right to Information' application asking this Court for interpreting the said order as what it likes.

9. This is, but, strange. More so, whence paragraph 2 of the said dated 25.04.2025 cannot be read in isolation and the complete order has to be read together compositely. It is the own case of the plaintiff that this Court has merely issued notice to the defendants, including the defendant nos.1 and 2 herein in the main suit and has not granted any interim injunction in the application under *Order XXXIX Rules 1 and 2* read with *Section 151* of the CPC to the plaintiff (I.A. 10385/2025) against the defendants as also what is pleaded by the plaintiff in paragraph 104 of the plaint, wherein a relief *qua* compliance of FRAND obligations has been sought by the plaintiff.

10. The aforesaid facts, cumulatively taken, are sufficient enough to infer that no correction of the said order dated 25.04.2025 is called for.

11. *Pithily* put, the sum and substance of all the aforesaid is that the issue *qua* the plaintiff being the SEP holder is very much pending and the plaintiff has not been granted any relief(s) *qua* that in its favour since only notice has been issued and the defendants herein, amongst all the remaining defendants, have been called upon to file their respective written statement(s) and replies.

12. Lastly, in view of the aforesaid, the present application being premature and pre-emptive, is based on mere hypothecations which are nothing but a fertile figment of imagination of the defendants, particularly,

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CS(COMM) 380/2025

Page 4 of 5



since the suit of the plaintiff *qua* SEP and compliance of FRAND obligations therein are very much still pending adjudication before this Court. So, is the application for interim injunction therein (I.A. 10385/2025) as well.

13. Based thereon, this Court sees no occasion for issuance of notice in the present application, although, the plaintiff is duly represented by the counsel on record. Finding no merit in the present application, the same is dismissed *in limine* with costs reduced to Rs.20,000/- (from earlier costs of Rs.50,000/-) to be paid to Army Central Welfare Fund [Account No. 520101236373338 and IFSC Code UBIN0530778] within a period of four weeks.

SAURABH BANERJEE, J

MAY 8, 2025/Ab