
(1970) 08 CAL CK 0027
In the Calcutta High Court
Case No : Suit No. 1056 of 1969

Biraja Bilash Paul

APPELLANT

Vs

Prem Engineering Works

RESPONDENT

Date of Decision : 18-08-1970

Acts Referred:

Citation : (1973) 1 ILR (Cal) 715

Hon'ble Judges : Ghose, J

Bench : Single Bench

Advocate : B.K. Bachawat and Ukil, for the Appellant; A.C. Bhabhra and T.K. Banerji, for the Respondent

Final Decision : Dismissed

Judgement

Ghose, J.—This is an application for revocation of leave under Clause 12 of the Letters Patent granted to the Plaintiff to institute this suit in this Court. In the petition two points were urged for revocation of such leave, viz. (i) no part of the cause of action as alleged in the plaint arose within the jurisdiction of this Court and (ii) the balance of convenience of trying this suit lies overwhelmingly in the appropriate Court in U.P. Mr. Bachawat appearing on behalf of the Applicant before me has urged only one point as the ground for revoking leave under Clause 12 of the Letters Patent, viz. no part of the cause of action in this suit arose within the jurisdiction of this Court.

2. This suit was filed by the Plaintiff, inter alia, for an injunction to restrain the Defendant, its agent and servants from infringing the patent belonging to the Plaintiff in respect of drawings and inventions mentioned in the plaint being Patent No. 96802 and dated December 2, 1964, and consequential relief including damages on account of wrongful infringement of the aforesaid patent. The Plaintiff, as alleged in the plaint, is the proprietor of the said patent bearing No. 96802 dated December 2, 1964, in respect of an invention of Calendria Pan for boiling sugar syrup quickly. The alleged infringement has been pleaded in para. 5 of the plaint.

5. On or about March 6, 1969, the Plaintiff came to know that the Defendant had given a quotation for forty ton capacity Centra First Low Head Vacuum Pan to one Mohini Sugar Mills Limited "of No. 25 Brabourne Road, Calcutta, within the said jurisdiction and from the specification sheets and other papers. sent with the said quotation it appears that the same is being manufactured by the Defendant in accordance with the Plaintiff's invention and in violation and infringement of the said Patent right of the Plaintiff. From the said quotation it also appears that the Defendant has already supplied 11 such Pans to various parties without the Plaintiff's knowledge or consent and in gross breach and infringement of the Plaintiff's aforesaid Patent right.

3. The Plaintiff has also pleaded in para. 8 of the plaint as follows:

8. By a letter dated March 6, 1969, written by his Solicitors the Plaintiff called upon the Defendant to pay the said sum of Rs. 1,50,000 and to deliver up the drawings and other data supplied to the Defendant by the Plaintiff and also to deliver and destroy all infringing articles in the Defendant's, possession, - custody and control and to affirm an affidavit before a competent authority stating that the Defendant has so destroyed with such damages. The said letter was sent from No. 6 Old Post Office Street, Calcutta, within the said jurisdiction and the same was received by the Defendant at Meerat outside the said jurisdiction.

4. The Plaintiff obtained leave under Clause 12 of the Letters Patent to institute the said suit in this Court on the basis of the allegations, made in para. 5 and para. 8 of the plaint. Mr. Bachawat has submitted before me that all that para. 5 of the plaint states is that the Defendant submitted a quotation for supply of 40 ton capacity Centre First Low Head Vacuum Pan to one Mohini Sugar Mills Limited of No. 25 Brabourne Road, Calcutta, within the said jurisdiction. Mr. Bachawat contended that supplying of such quotation was neither an offer to supply such pan nor acceptance of any offer to purchase such pah in violation of the Plaintiff's right in respect of the said patent. Mr. Bachawat in support of his contention relied on the-case of Grainger and Son v. William Lane Gough 1896 A.C. 325. In the said case it is held that if a foreign merchant who advertises through agents in the United Kingdom and invites offers for sale of his goods to customers in the United Kingdom, does not carry on business in the United Kingdom within the meaning of the income tax Acts so long as all contracts for the sale and all deliveries of the merchandise to customers are made in a foreign country. Mr. Bachawat contended that in an action for infringement of patent, such as the present one, the Plaintiff has to prove only two things, viz., (a) that the Plaintiff is the proprietor of the patent and (b) the Defendant has wrongfully infringed the said patent. Supply of quotation according to Mr. Bachawat is no part of the cause of action inasmuch as it was neither an offer to supply nor an acceptance of any offer to purchase and, as such, is no part of the cause of action for infringement of the patent. Mr. Bachawat also contended that the sending of a letter of demand as pleaded in para. 8 of the plaint is no part of the

cause of action for the aforesaid reasons. Mr. Bachawat relies on the case of *Anath Bandhu Deb Vs. Dominion of India*, . Mr. Bachawat contended that refusal to comply with the demand might form a part of the cause of action, but in the instant case no such refusal has been pleaded to have taken place within the jurisdiction of this Court. Mr. Bachawat relied on the following observations made by P. B. Mukharji J. as his Lordship then was:

Curiously enough, it is not pleaded that refusal was within the jurisdiction of this Court. Paragraph 10 6f the plaint rests content by pleading that D.C., Billing Centre, Fort William, Calcutta, which was dealing with this claim was within jurisdiction. But if the refusal by it is not pleaded, then I do not see how that founds the cause of action.

5. Mr. Bhabhra, on the other hand, appearing on behalf of the Respondent states that in para. 9 of the said plaint particulars of the alleged infringement of the patent have been set out, but in sub-para, (c) of para. 9 of the plaint it has been stated that

The offer for sale of Calchdria Pans to one Mohini Sugar Mills Limited of No. 25 Brabourne Road, Calcutta, similar in all material respect to the specification of which the Plaintiff at all material times had and still has the Patent Right.

In dealing with the plaint for revocation of leave granted under Clause 12 of the Letters Patent, in my opinion, the entirety of the plaint has to be looked into in order to see whether any part of the cause of action as pleaded in the plaint arose within the jurisdiction of this Court. In para. 9(c) of the plaint it appears that, a part of the cause of action arose within the jurisdiction of this Court. In this application, for revocation of leave under Clause 12 of the Letters Patent, I have to proceed on the basis that, allegations made in the plaint are true. The case of *Grainger & Son v. William Lane Gough* (Supra) only decided that soliciting customers within the United Kingdom was not exercising trade or carrying on business within the meaning of the income tax Act. Supply of quotations, to my mind, seems invitation to trade in the goods in respect whereof quotations were supplied. If that be so, I do not understand why they should not be taken to be at least an attempt to infringe patent and a cause of action in the instant suit. For the aforesaid reason, I am of the view that on the face of the plaint a part of the cause of action certainly arose within the jurisdiction of this Court.

6. I am unable also to accept the other contentions of Mr. Bachawat with regard to the pleadings made in para. 8 of the plaint. It is true that refusal will clinch the matter so far as the refusal not to comply with a demand for not infringing the patent is the final act in the cause of action to threat to infringe a patent, but it is not the entirety of the cause of action in such threat to infringe. Demand not to infringe is also a part of the cause of action. Refusal is only the clinching point or the final stage of such threat to infringe. Therefore, taking particularly the demand contained in that letter will be a part of the cause of action if that be traversed by the Defendant in the written statement and, consequently, the place

of despatch of such letter of demand will also be a place where a part of the cause of action arose.

7. For all the aforesaid reasons, I am of opinion that this application must fail and is dismissed. Mr. Ukil wants time to file the written statement on behalf of the Defendant. Time to file the written statement although has expired, on the prayer of Mr. Ukil, I extend such time by four weeks from date. The Plaintiff's costs in this application will be cost on the cause. Certified for counsel.