

(1973) 03 DEL CK 0005

In the Delhi High Court

Case No : F.A.O. (O.S.) No. 53 of 1970, against judgment of V.D. Misra, J., D/- 24-4-1970

Neiveli Ceramics and Refractories Ltd., Vadalur (Tamil Nadu) **APPELLANT**

Vs

Hindustan Sanitaryware and Industries Ltd., Calcutta **RESPONDENT**

Date of Decision : 27-03-1973

Acts Referred:

Citation : AIR 1974 Delhi 105 : (1974) 10 DLT 158 : (1973) ILR Delhi 452

Hon'ble Judges : R.N. Aggarwal, J;Prakash Narain, J

Bench : Division Bench

Advocate : Anoop Singh, for the Appellant; N.K. Anand, for the Respondent

Judgement

Aggarwal, J.—This first appeal by Neiveli Ceramics and Refractories Ltd. Arises out of a petition filed by Hindustan Sanitaryware and Industries Limited (hereinafter called the "petitioner-company") for the revocation of Patent No. 103411 granted in favor of the respondent to the petition on January 13, 1966.

2. The controversy in appeal is with regard to the meaning to be given to the expression " a High Court " in Section 26 of the Patents and Designs Act, 1911 (hereinafter called the "Act"). According to the appellant, the expression "a High Court" in the said section means the High Court which would otherwise have jurisdiction over the person against whom the petition is filed under the Act or over the subject matter of such petition, and not "any" High Court. According to the petitioner-company the aforesaid expression means any High Court and the jurisdiction of a High Court to entertain the petition u/s 26 of the Act is not circumscribed by limitation laid down in Section 20 of the Code of Civil Procedure.

3. The facts relevant for decision of the appeal are that the petitioner-company is the manufacturer and seller of ceramic wares and sanitary wares. On January 13, 1966, the respondent to the petition obtained a patent under No. 103411, which related to the alleged improvements in or relating to sanitary wares. According to the respondent-appellants and their statements of claim the respondents are

inventors of :

"Improved sanitaryware comprising a wash basin or sink or like device characterized in that it comprises an extension of the rim of the basin structure all round to form a projecting ridge; a supervening sheet porcelain or other material integrally formed with its adjacent surroundings, covering each of the mouths of the number of extra holes provide for the purpose of anticipating a future need to install more faucets than are normally needed, the said sheets of porcelain thus formed being adapted to remain intact flush with the surrounding surface and further adapted to break and fall away exposing the mouth of the hole, whenever a slight tap is given by a soft-headed hammer; at least two recesses provided at the rear of the wash basin or sink or like device, capable of engaging with two L-hooks embedded in a wall or like support."

4. On September, 1969, the petitioner-company filed a petition in the Delhi High Court u/s 26 of the Act for revocation of the patent inter alias on the ground that the inventions were not of a new manufacture or improvement, that they did not involve any inventive step and that the patent was obtained on a false suggestion or representation. The petition was contested by the respondents. The respondents, besides the pleas on merits, contended that the Delhi High Court had no jurisdiction to entertain the petition. The respondent also claimed the stay of the proceedings on the ground that they had filed a suit against the petitioner-company in the High Court at Madras for infringement of their Patent, and for rendition of accounts and that it would be more just and convenient that the issue with regard to the revocation is also decided by the High Court at Madras.

5. On the pleading of the parties, the court framed the following preliminary issues:

1. Whether this Court has jurisdiction to entertain this petition? O. P. P.
2. Whether the present petition is liable to be stayed in view of the respondents having filed a suit for infringement of the patent in dispute against the petitioners in the Madras High Court?

Both the issues have been found by a learned Single Judge of this Court against the respondents.

6. Before discussing the contentions of the parties, it will be useful to examine the scheme of the Act concerning the patents. Section 2 is the defining section. Part I of the Act deals with patents, Section 3 provides that an application for a patent may be made by any person whether he is a citizen of India or not, and whether alone or jointly with any other person. Section 5 provides for the proceedings to be taken on the application. Section 10 provides that if there is no opposition, or, in a case of opposition, if the determination is in favor of the grant of a patent, a patent shall, on payment of the prescribed fee, be granted subject to such conditions, if any, as the Central Government thinks expedient, to the

applicant and the Controller shall cause the Patent Office.

Section 26 of the Act provides that revocation of a patent in whole or in part may be obtained on petition to or on a counter claim in a suit for infringement before a High Court on all or any of the grounds listed therein, Section 29 (1) provides for suits for infringement of patents. The proviso to S. 29 (1) provides that where a counter claim for revocation of the Patent is made by the defendant, the suit, along with the counter claim shall be transferred to the High Court for decision.

7. Section 2 (7) defines the expression "High Court". It reads: -

"High Court" means-

- (a) in relation to a State, the High Court for that State;
- (b) in relation to the Union Territory of Delhi, the High Court of Delhi;
- (c) in relation to the Union Territory of Manipur or Tripura, the High Court of Assam;
- (d) in relation to the Union Territory of Andaman and Nicobar Islands, the High Court at Calcutta; and
- (e) in relation to the Union Territory of the Laccadive, Minicoy and Amindivi Islands, the High Court of Kerala.

8. The contention of Shri Anoop Singh is that the expression "a High Court" in Section 26 should be interpreted to mean the High Court where the subject-matter is located or where the respondents reside or carry on business. We find no cogent reason to place the interpretation sought for. u/s 3 of the Act, an application can be made for the grant of a patent by any person, whether he is a citizen of India or not. Immediately on registration of the invention any person may move a petition u/s 26 for the cancellation of the patent, provided the conditions laid down in Section 26 (2) are satisfied. A person in whose favor the patent may have been granted may not be residing in India or carrying on business in India. In those circumstances, difficulty may arise as regards the court which would have jurisdiction to entertain the petition. There appears to be no reason to confine the jurisdiction of the Court where the respondent resides or carries on business, or where the subject-matter is located. This conclusion finds support from the provisions of Sections 28 and 34 of the Act.

Section 28 gives power to a High Court to frame an issue and send it for before another High Court or any district court on any question arising upon a petition to itself u/s 26. Now, if the expression "a High Court" in Section 26 had intended to mean only the High Court which had jurisdiction as contended, there was no need of giving power to the Court for framing an issue and sending it for trial to another High Court.

Section 34 of the Act provides that a High Court to which a petition has been presented u/s 26 may stay proceedings on or dismiss the petition if in its opinion

the petition would be disposed of more justly and conveniently by another High Court. This provision further makes it clear that the expression "a High Court" in Section 26 has not been used to mean the High Court having jurisdiction over the subject-matter or the respondent before it for otherwise there was no purpose in having a provision like section 34.

The provisions of Section 26 read with Sections 28 and 34 indicate that the legislature did not intend to confine the jurisdiction of the High Court u/s 26 to cases where the subject-matter had arisen within its jurisdiction and to cases where the respondent resided or carried in business within its jurisdiction. What the legislature intended was, in our view, that a petition u/s 26 could be moved in any High Court provided it was a High Court set out in Section 2 (7) of the Act, and it was left to the Court either to try the matter itself or to have recourse to the provisions of Section 34.

9. Part II of the Act deals with registration of designs. Section 51-A provides that any person interested may present a petition for the cancellation of registration of a design at any time after the registration of a design at any time after the registration of the design to the High Court or any of the grounds specified therein. The interpretation of the expression "the High Court in Section 51-A was considered in *Kohinoor Mills, Misc, Petn. No.274 of 1956* decided on 8-7-1957 (Bom) by Mr. Justice K. T. Desai of Bombay High Court, And in *Aila Rubber Works v. Good Day Rubber Industries, C. O. 2-D/66* decided on 25th November, 1967 (Delhi) by Mr. Justice S. K. Kapur of this High Court. In the first referred case, Desai J after discussing the various provisions contained in the Act, held-

"What I have to consider is whether the legislature intended to restrict the jurisdiction of the High Courts in respect of an application for the revocation of a patent or the cancellation of the registration of a design having regard to the subject-matter of the application or having regard to the application or the place where he carried on business. The provisions relating to patents indicate that the legislature contemplated the sending down for the trial of any issue in such an application to another High Court. It also contemplated the stay of proceedings when the application could be more justly or conveniently determined by another High Court in India. These provisions indicate that the legislature did not intend to confine the jurisdiction of the High Court u/s 26 in respect of an application for revocation of a patent, to cases where the subject-matter had arisen within its jurisdiction and to cases where the respondent resides or carried on business within its jurisdiction. In my view, what the legislature intended was an application to any High Court provided it was a High Court set out in Section 2 (7) of the Act and it was left to the Court either to try the matter or to stay the matter if the court thought that the application could be more justly or conveniently disposed of by another High Court. In my view, the same constructions should be placed on the expression "the High Court" when used in connection with designs, and an application for the revocation of a design can be made to any High Court provided it was one of the High Courts specified in

Section 2 (7) of the Act. When one has to consider the question of jurisdiction, which has been conferred by a special enactment upon a High Court, one has to look to the provisions of that Act for the purpose of determining when the Court is to exercise that jurisdiction. One cannot turn to the provisions of the Letters Patent or the CPC for the purpose of determining when that jurisdiction has to be exercised. If the legislature intended to circumscribe the ambit of the special jurisdiction of the Court, it was for the legislature to have expressly stated so."

10. A similar view was taken in the second case by Mr. Justice Kapur.

11. A reference was also made to sister enactments such as the Copyright Act and the Trade and Merchandise Marks Act. Section 62(1) of the Copy right Act provides that every suit in respect of the infringement of copyright in any work or the infringement of any other right conferred by that Act shall be instituted in the district court having jurisdiction. Sub-section (2) of section 62 provides that for the purpose of sub-section (1) a district court having jurisdiction shall, notwithstanding anything contained in the Code of Civil Procedure, or any other law for the time being in force, include a district Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit actually and voluntarily resided or carried on business or personally worked for gain.

12. Section 2(h) of the Trade and Merchandise Marks Act, 1958, defines High Court and it reads:

"High Court" means the High Court having jurisdiction u/s 3.

Section 3 provides that the High Court having jurisdiction under the Act shall be the High Court within the limits of whose appellate jurisdiction the office of the Trade Marks Registry referred to in each of the cases specified therein is situate.

13. The purpose of referring to the above enactments is to show that the legislature was consciously making departure from or amendments in the ordinary rule governing the jurisdiction of courts.

14. We are in agreement with the views expressed in the authorities cited and are of the opinion that the Delhi High Court had jurisdiction to entertain the petition..

15. Shri Anoop Singh next contended that the appellants had filed a suit against the petitioner company in the High Court at Madras for infringement of their patent and for rendition of accounts and it would be more just and convenient that the issue with regard to the revocation is also decided by the Madras High Court. The petition u/s 26 was filed in the Delhi High Court on 10th September 1969. The appellants filed the suit for infringement of the patent in the Madras High Court on 20th January 1970. Beyond the fact that the appellants had filed a suit for infringement of the patent in the Madras High Court, the appellants have placed no material on the record to show as to why it would be more just and convenient that the petition for revocation should be tried at Madras. We find no

cogent reason to stay the proceedings or to transfer the petition for trial by the Madras High Court.

16. For the foregoing reasons, we find no merit in the appeal and it is dismissed with costs, Council's fee is fixed at Rs. 300/-.

17. Appeal dismissed.