Telefonaktiebolaget Lm ... vs Mercury Electronics & Anr on 9 July, 2015

Author: Najmi Waziri

Bench: Najmi Waziri

* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Date of Decision: 09.07.2015
+ CS(OS) 442/2013
TELEFONAKTIEBOLAGET LM ERICSSON(PUBL) ..... Plaintiff
Through: Mr. C.S.Vaidyanathan & Mrs. Pratibha M. Singh,
Sr. Advs. with Mr. Saya Choudhary Kapur &
Mr. Ashutosh Kumar, Advs.

versus

MERCURY ELECTRONICS & ANR ..... Defendants
Through: Mr. Sai Krishna Rajagopala with Mr. J. Saideepak,
Ms. Savni Dutt, Mr. Arijit Sharma, Ms. Sneha Sharma &
Mr. Rajiv Chaudhary, Advs.
Mr. Kamal Nijhawan, Sr.Standing Counsel for
DGCEI/non-applicant in IA No.598/2015

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Open Court)

1. On 07.07.2015, after considering the pleadings and upon hearing the learned counsel for the parties, issues were framed. However, the learned counsel for the defendants had objected to onus of proof qua issue No. 7 being placed on the defendants. The issue relates to the plea of invalidity set by the defendants apropos suit patents bearing registration Nos. IN203034, IN203036, IN213723, IN229632, IN240471, IN241747. Accordingly, the matter is listed today for arguments on this point.

2. Mr. Saikrishna Rajagopal, the learned counsel for the defendants insists that onus to prove the aforesaid issue must be on the plaintiff since there can be no presumption of validity of a patent which is evident from a combined reading of Sections 13(4), 64 and 107 of the Patents Act, 1970. He further submits that unlike Section 31 of the Trade Marks Act, 1999 where registration of the trade mark is prima facie evidence of its validity, the Patents Act does not provide for any such presumption.

3. He relies upon Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries, AIR 1982 SC 1444 which held that the grant and sealing of the patent, or the decision rendered by the Controller in the case of opposition does not guarantee validity of the

patent; it can be challenged before the High Court on various grounds in revocation or infringement proceedings; and it is expressly provided under Section 13(4) of the Patents Act. He further relies upon a judgment of this Court in Ten XC Wireless Inc. & Anr. v. Mobi Antenna Technologies (Shenzhen) Co. Ltd., (2012) 187 DLT 632 where the application(s) for interim injunction was dismissed on the ground that the defendants therein had raised substantial, tenable and credible challenge to the validity of the patent.

4. In reply, Mr. C S Vaidyanathan, the learned Senior Advocate for the plaintiff draws the attention of the Court to Sections 101 to 104 of the Evidence Act, 1872 to contend that (i) when the defendants have asserted invalidity of the suit patent, they ought to prove the invalidity; (ii) assuming no evidence apropos

validity/invalidity of the suit patents is led by either of the parties, then the defendants' case would fail, hence, onus of proof must be on them; (iii) burden of proof as to a fact lies on that person who wishes the Court to believe in its existence unless it is provided to the contrary by any law; and (iv) validity of a patent may not be presumed only for the purpose of interim injunctions but in case of proof, the onus must rest on that party which attacks the validity of the patent which was granted after following due process of law.

5. The learned Senior Advocate further draws the attention of the Court to Section 114 of the Evidence Act to contend that the Court may presume the existence of certain facts, i.e., grant of suit patents and their validity in the present case, which is likely to have happened in the common course of natural events, human conduct, and as per procedure prescribed in law. He therefore, submits that there exists a presumption of validity of a patent which has been granted as per provisions of the Patents Act and if the defendants raise a plea of invalidity, the onus to prove the same must be on them keeping in the mind the well settled principles governing evidence.

6. It is further submitted that a comparative reading of Section 48 of the Patents Act and Section 28 of the Trade Marks Act whereby rights are conferred upon the holder of a patent or trade mark registration as the case may be, would make it clear that there exists a presumption in favour of their validity.

7. The principle governing framing of issues is that a material proposition of fact or law is affirmed by one party and denied

by the other. Similarly, Chapter VII of the Evidence Act stipulates in clear terms, as regards the existence of burden on the parties to prove the concerned issues. Under Section 101, the burden is placed upon the person who wants his right or liability to be declared by the Court. According to Section 102, the burden is on the person, who would fail if no evidence is adduced. The next provision, Section 103 is a little specific insofar as it mandates that it is for the person who wishes the Court to believe in the existence of a particular fact to prove the same.

8. From the pleadings, it is evident that the suit is on the basis of registered patents. However, the defendants in their counter claim have sought to challenge the suit patents under various grounds

provided under Section 64 of the Patents Act. If the present case is examined keeping the mind the above provisions under the Evidence Act and the principles governing framing of issues, the burden to prove invalidity of the suit patents would squarely fall upon the defendants.

9. The Court is of the view that the defendants would have to discharge the burden of proving invalidity of the suit patents since it is their assertion. Assuming no evidence is led apropos the said contention, the defendants would lose. Moreover, the plea of invalidity of the suit patents is no presumption which in turn would place the burden upon the plaintiff. On the contrary, as per Section 114 of the Evidence Act, there is a presumption of validity of the suit patents which happened in the common course of public business, i.e., grant of patent under the provisions of the Patents Act.

10. Reliance on Bishwanath (supra) and Ten XC Wireless (supra) by the learned counsel for the defendants is also misplaced. In fact, Bishwanath was premised on Section 13(4) of the Patents Act, according to which there is no presumption of validity of a patent only to the extent that no liability shall be incurred by the Central Government or any other officer thereof in connection with the grant of patent. In Ten XC Wireless, no presumption was drawn in favour of the patent only for the purposes of an interim injunction and not for onus of proof.

11. In view of the above, issue No. 7 as framed on 07.07.2015 stands and the onus to prove the same would be on the defendants.

NAJMI WAZIRI, J.

July 09, 2015/vmk