Hind Mosaic And Cement Works And Anr. vs Shree Sahjanand Trading Corporation ... on 25 January, 2008

Equivalent citations: MIPR2008(1)402

Author: K.A. Puj

Bench: M.S. Shah, K.A. Puj

JUDGMENT

K.A. Puj, J.

1. The appellants/original plaintiffs have filed this Appeal against the order and judgment dated 21.8.2007 of the learned Single Judge of this Court passed in Injunction Application in Civil Suit No. 1 of 2007 in its original jurisdiction, rejecting the Interim Application for injunction and consequently vacating the temporary injunction granted by the learned City Civil Judge, Ahmedabad in Regular Civil Suit prior to its transfer to this Court.

2. The factual matrix giving rise to the present Appeal are that the appellant after intensive research, development and incurring huge expenses, invented the invention viz. "Polyvinyl Chloride threaded pipe joint system with coupler and wire locking device comprising two pipe joining components, two sealing rings, including a wire lock, the said wire lock is component being inserted into the groove which locks the coupler with the one end of the pipe joint, the said coupler joining both the ends using the threads, the said threads are made in the form of square type threads and the said sealing rings are fixed to both the ends of the pipes and coupler". The Patent Office in India, after following the entire rigorous procedure under the Patents Act right from application, publication of application, report by examiner and its consideration by controller, inviting objections, if any, etc has duly granted Patent in favour of the appellant No. 1. The inventor has assigned the rights under the said patent in favour of the appellant No. 1 and the appellant No. 2 is the licensee of appellant No. 1.

3. It is the case of the appellant that the appellant learnt through one advertisement published in Gujarati daily, 'Gujarat Samachar' dated 5.6.2007 that the identical product described as "first kind of PVC Wire Lock System in the world" is being produced and marketed by respondent No. 2 through its distributor: respondent No. 1. The appellant therefore asked its representative to collect the product of respondent No. 2 from the respondent No. 1. The appellant thereby came to know that the respondents have illegally copied the patented product of the appellant. The appellants were, therefore, constrained to file Suit being Regular Civil Suit No. 1432 of 2007 in the Court of learned City Civil Judge, Ahmedabad under the provisions of the Patents Act. The appellants also filed application for interim injunction under the provisions of Order 39 Rule 1 and 2 of CPC. The

learned City Civil Judge, Ahmedabad vide his order dated 2.7.2007 granted ex-parte ad-interim relief in favour of the appellants.

4. On service of summons, the respondents appeared and filed reply as well as counter claim for revocation of patent. As per the provisions contained under Section 104 of the Patent Act, the entire suit proceedings were, therefore, transferred to this Court and the suit is renumbered as Civil Suit No. 1 of 2007. While transferring the suit, interim relief granted earlier was extended and the same was again extended from time to time by this Court till the impugned order is passed by the learned Single Judge of this Court.

5. The case of the appellants in the Civil Suit is that the appellants with the intention to obtain patent in other countries filed PCT application for ascertaining the prior art in such jurisdictions. Since the grant of patent is territorial in nature the PCT helps the applicant to ascertain the advisability of going for national phase of patent grant procedure. In this background the appellant No. 2 made one common PCT Application which was filed with Indian Patent Office by specifying US Patent Office and Austrian Patent Office as two International Search Authorities. The applications were apparently forwarded to the nominated search authorities. On 30.7.2004 Austrian Patent Office in the capacity of International Search Authority sent communication to the Receiving Office about the fact of non receipt of 16 drawings which were part of the PTC Application. It appears to the appellant that the said documents were not sent to the Austrian Patent Office and therefore they did not have access to 16 crucial drawings and went ahead and prepared the report without any such drawings based only on the description of the invention. The Austrian Patent Office therefore made the remarks that, Though the letter of 30th July, 2004, which was transmitted to the receiving office, said that 16 sheets of drawings were missing, no drawings have been transmitted to the examining office. Therefore, the examiner was not able to carry out a specific search. The examiner focused on the description and the claims, which were so general, that several possibilities were practicable. It was impossible to define, where the grooves, the thread and the sealings were positioned inside the coupling.

According to the appellants, the report of the Austrian Patent Office is not based on the merits of the application. The appellants did not have notice of either non-receipt of the 16 drawings by Austrian Patent Office or the report prepared by them without the aid of 16 drawings. The appellants were not informed by any authority and learnt about the proceedings only during the course of the present proceedings.

1. It is also the case of the appellants that on 8.12.2005 the publication of the complete PCT Application with International Search Report as prepared by both the US Patent Office and Austrian Patent Office as received by International Bureau of WIPO, was carried out. However, this did not contain the Written Opinion and no communication of such publication was ever transmitted to the appellants. Even while publishing this in the website a Note is prefixed which reads as under, Note: This International Search Report was established in addition to the report duly established by the competent International Searching Authority specified by the applicant. It is published for information only and has no legal status for the purpose of the PCT procedure (for example, in the computation of time limits).

7. According to the appellants, no such Note was there when the International Search Report of US Patent office was transmitted to the appellants. The purport of the Note is that publication has no legal consequences and not the International Search Report as such.

8. It is also the case of the appellants that on 29.11.2006 the publication of International Preliminary Report on Patentability by International Bureau of WIPO was carried out. The said document contains both the Written Opinion, viz. Written Opinions prepared by US Patent Office and Austrian Patent Office. This information was accessed by the appellants for the first time only on 15.8.2007 through the website of www.wipo.int. However, no such International Preliminary Report on Patentability was ever received by the appellants.

9. From the above facts, the appellants' stand before the Court was that the appellants were not duly intimated about the proceedings by the Austrian Patent Office. However, during the fag end of the arguments before the learned Single Judge, certain submissions were made on behalf of the respondent No. 2, which were unsupported by pleadings and affidavit with the intent to mislead and prejudice the Court. The appellants were mainly aggrieved by and dissatisfied with the finding given by the learned Single Judge to the effect that the granted patent is mere combination and/or arrangement or re-arrangement or duplication of known-device/integers without there being any synergy amongst different integers and combination of known devices functioning in a known way. Hence, under Section 3(f) of Patent Act the invention is not valid one. The appellants' arguments against this finding are that the said finding is factually incorrect and not based on the material on record and arguments submitted by the appellants. Different elements of the inventions especially the pith and marrow of the invention involving the wire/spline and square type threads function dependently on each other resulting in wire getting activated as wirelock due to the synergy. According to the appellants, learned Single Judge failed to consider and even refer to the expert report/certificate on record in this regard. The different elements of the patented invention are functioning in a way unknown earlier. The learned Single Judge failed to consider the material on record that the functionality of the wire has changed by the invention. The invention in question is not a mere combination of known devices. The functioning of the wire has changed from an axial load bearing element to that of coupler rotary lock and the wirelocking action is triggered only when coupler rotates on threads. The seals have been placed one inner and one outer to provide space for accommodating the wirelock system. The special square type threads have a different profile and has extra side clearance.

10. The appellants were also aggrieved by another finding of the learned Single Judge to the effect that the appellants have made false and misleading statements in the plaint which disentitle the appellants from equitable remedy. The appellants' arguments against this finding are that no false statements are made in the plaint by the appellants. The fact that the respondents have denied the said fact does not by itself amount that the plaint statements are false. The same is just a disputed question of fact and the learned Single Judge ought not to have concluded even without evidence being led by the parties that the technical statements made by the appellants were false. In the IS 5382 the scope clearly shows that standard provides the requirement for material use for vulcanized solid rubber sealing ring. The standard does not cover the dimensional and joint design requirements. In case IS 4694:1968 in the first page the basic profile as figure 1, the same is not as

per fig. 17 as the side clearance is not in (Add) fig. 1 of IS 4694:1968. These are the factual issues that the appellant is entitled to lead the evidence during the trial. Hence, the finding of the learned Single Judge is incorrect and the same is untenable in the facts of the case.

11. The appellants were also aggrieved by the third finding recorded by the learned Single Judge that the appellants have suppressed facts which disentitle the appellants from equitable remedy. According to the appellants, the appellants have not suppressed any facts before the Court. The international Search Report issued by the Austrian Patent Office is based on the specifications which were totally different from the specifications of the Indian Patent in question. Hence, the International Search Report of the Austrian Patent Office has no direct relevance to the validity or otherwise of the Indian Patent. The respondent deliberately suppressed this fact from the Court and in fact it is the respondent who has successfully misled the learned Single Judge. Hence, the findings of the learned Single Judge is incorrect and the same is untenable in the facts of the case.

12. Mr. Dushyant Dave, learned Senior Counsel appearing with Mr. Y.J. Trivedi, for the appellants has submitted that once the patent is duly granted in favour of the appellants as per the provisions of Section 48 of Patent Act, the rights of Patentee are statutorily recognised and protected. The law protecting the Intellectual Property Rights (IPR) is a law based on common law principles as laid down in Law of Torts which provides that such rights must be protected. He has further submitted that the Patent in question was duly granted in favour of the appellant No. 1 and was duly notified in the official gazette before the grant wherein the full particulars of the Patent specifications were disclosed. The respondent who is seeking for revocation of the patent of the appellant on the ground of lack of inventive step and non-patentability of the patent in question never objected before the authorities. Thus, the respondent having failed to object the acceptance of patent, then they shall seek revocation and thereby infringe the rights of the appellant which amount to negation of rights of patentees/inventors. He has further submitted that law relating to the interim injunction in patent matters has undergone substantial change in as much as it is held in number of judgments of the Hon'ble Supreme Court that merely because there is prayer for revocation of the patent the patentee should not be denied the interim inunction. He has further submitted that there is no justification on the part of the learned Single Judge to hold that the invention of the appellants is not patentable. The said finding adversely and prejudicially affects the statutorily recognised rights of the patentee. The said finding was uncalled for in the facts and circumstances of the case and the same is liable to be set aside. The difference in definition of inventive steps in the Indian Patent Act and the U.S.A. Patent Act ought to have been appreciated by the learned Single Judge. He has further submitted that there was no material before the Court to conclude that the appellant had received International Search Report issued by the Austrian Patent Office and consequently the said fact was wrongfully suppressed by the appellant. It is a fact that the appellant had not received the said report hence the appellant could not produce the same. He has further submitted that the International Search Report of Austrian Patent Office had little relevance to the facts of the case as the complete specifications on which the said report was based was substantially different from the complete specifications of the patent in question in as much as 16 crucial drawings were not part of the same. Mr. Dave further submitted that the appellant had never received any copy of the International Search Report of Austrian Patent Office and admittedly there was no material before the Court to prima facie come to the conclusion that the appellants had in fact, received any copy of

International Search Report from the Austrian Patent Office. Mr. Dave further submitted that there are two crucial elements of Indian Patent No. 203004, namely, the 'wirelock element' and the 'threads element', which do not function independently and function in confirmity with each other. There was no material before the Court to conclude that the said two elements function independently. Both the said elements function in a complimentary way in achieving the final result of preventing the loosening and detachment of coupler. He has, therefore, submitted that the Indian Patent No. 203004 is certainly an invention under Section 3 of the Patent Act, 1970.

13. Mr. Dave further submitted that the learned Single Judge has not appreciated the expert report and affidavit, which was a part of the records, which conclusively held that the functioning of 'wirelock element' has changed in the Indian Patent No. 203004 while compared to the earlier functionality. Mr. Dave further submitted that the respondent No. 2 being a manufacturer of PVC pipes and products for the past 30 years, can be described as 'the person skilled in art'. The respondent No. 2 itself had made claims that the product based on invention under Indian Patent No. 203004, is involving innovation and enormous utility. He has, therefore, submitted that the said claim of the respondent No. 2 ought to have been considered by the learned Single Judge for the purpose of holding that the invention under the Indian Patent No. 203004 prima facie involves innovation and, therefore, the claims under the same are prima facie valid. He has further submitted that though the use of the PVC pipe with coupler joint, the use of the wire in holding the coupler and pipe are known in the field since years, nobody could anticipate the combination of wire locking system in the coupler pipe joint in the particular manner as used by the appellant resulting into altogether new positive effect. Mr. Dave therefore submitted that the impugned order passed by the learned Single Judge on 21.8.2007 in Interim Injunction Application of Civil Suit No. 1 of 2007 deserves to be quashed and set aside and the relief as prayed for in the Injunction Application deserves to be granted till final disposal of the suit.

14. Mr. Dave, while referring to the pleadings of the parties submitted that patent No. 787440 is not relevant for the purpose of appreciating and ascertaining the validity of the patent No. 203004 belonging to the appellants. In the complete specification of GB patent No. 787440, it is stated that the invention provides a pipe coupling comprising male and female members of synthetic plastic material having interchanging thread portions, the threads being formed as round, square or acme threads. However, it does not provide for a wire lock and sealing rings, coupler with ribs, P-end and T-end of the joint, pipe with the front end mechanised to form seat for coupler inner sealing ring. Therefore, the said invention described by the respondent is not matching with the invention claimed by the appellant in the patent. Certain features may be known to the particular incident, but that one feature should not be considered while examining the novelty of the patent which contained various other claims and other added material features or mechanism. The advancement in technology is always acquired to be considered on the basis of utility and development of science and hence, the earlier known principle alone, if covered in the patent, does not make it known or published.

15. The respondent has also relied on US Patent No. 4735444. This US Patent is totally different from the Indian patent for number of reasons:

I. This US Patent No. 4735444 is in respect of thin-walled stainless steel pipes where it is difficult to make threads due to the thin wall section. However, under the Indian Patent No. 203004, all the pipe ends are threaded.

II. To join two such thin-walled stainless steel pipes special thick wall couplings are made with male and female threads and are permanently attached to the thin walled pipes by internal circular weld. No such welding is required in case of pipes under Indian Patent No. 203004 and the externally threaded pipe-ends are joined with internally threaded coupler.

III. There are other features in the US Patent No. 4735444 such as each member has a shoulder which is abutted by the end of the other member in order to lock the members in rigid relationship. No such feature exists in the pipes under the Indian Patent No. 203004.

IV. The combination of wire lock with threads, coupler outer ribs, permanent and temporary end of joint, machined front portion of the pipe in the permanent end to form the seat for coupler inner ring which is a feature present in the Indian Patent No. 203004, is not present in the US Patent No. 4735444.

16. He has further submitted that though the respondent has produced several patent documents from India and abroad, in an attempt to establish its claim of revocation of Indian patent No. 203004, it has totally failed to produce even a scrap of paper showing the existence of relevant prior art or any product/invention having the combined features of square type threads along with the wire lock, and other features as existing in the Indian Patent No. 203004, in one particular product. The respondents have totally misunderstood and misinterpreted the specifications and the claims made in the Indian Patent No. 203004. The appellants are not at all claiming or ascertaining the rights independently in respect of many features of the said patent. The claim under the Indian Patent No. 203004 is in respect of the complete/composite Poly Vinyl Chloride Pipe Joint System with coupler and wire locking system, consisting essentially of coupler with two ribs and square-type threads, threaded pipe-ends having one pipe end machined to form seat for rubber ring, wire lock, inner sealing ring and outer sealing ring, which is claimed under the Indian Patent No. 203004. It is, therefore, not open to the respondent to segregate and divide several features and mechanical elements of the composite system and make an independent analysis and assessment of each such features for the purpose of seeking revocation of the said patent.

17. In support of his submissions, Mr. Dave relied on the judgment of Madras High Court in the case of Gandhimathi Appliances Limited v. L.G. Varadaraju and Ors. 2001 (1) CTR 459 (Madras) (DB), wherein it is held that the claim of the defendant that it's devices is not an infringement of plaintiff's devices cannot be accepted. It has clearly used all the devices used by the plaintiffs and by merely aiding a supplemental roller to the two truncated rollers attached to the shaft, it cannot be said that there has been no infringement at all. Appropriating what has already been patented, and as part of ones product and adding something thereto, does not render such device any less an infringement of the patented product as if it were to be held otherwise, anyone who makes the slightest

improvement over the pre-existing knowledge can claim to disregard every patent then in existence in respect of pre-existing state of knowledge as reflected in the different devices for which patents had been granted at a prior point of time. It is further held that the plaintiffs are, therefore, entitled to an injunction against the infringement of it's patent. Defendant's product prima facie does infringe the plaintiffs. The defendant has, therefore, to be restrained from manufacturing and marketing the product similar to that of the plaintiffs. An injunction was, therefore, issued subject, however, to the condition that the plaintiffs shall give an undertaking to compensate the defendant in damages in the event of the plaintiffs not succeeding at the trial of the action.

18. Mr. Dave further relied on the decision of Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries , wherein it is held that the fundamental principle of Patent Law is that a patent is granted only for an invention which must be new and useful. That is to say, it must have novelty and utility. It is essential for the validity of a patent that it must be the inventor's own discovery as opposed to mere verification of what was already known before the date of the patent. Unlike the Patents Act, 1970, the Act of 1911 does not specify the requirement of being useful in the definition of invention. But Courts have always taken the view that a patentable invention, apart from being a new manufacture, must also be useful. The foundation for this judicial interpretation is to be found in the fact that Section 26(1)(f) of the 1911 Act recognised lack of utility as one of the grounds on which a patent can be revoked.

It is further held that it is important that in order to be patentable an improvement on something known before or a combination of different matters already known, should be something more than a mere workshop improvement; and must independently satisfy the test of invention or an inventive step. To be patentable the improvement or the combination must produce a new result, or a new article or a better or cheaper article than before. The combination of old known integers may be so combined that by their working interrelation they produce a new process or improved result. Mere collection of more than one integers or things, not involving the exercise of any inventive faculty, does not qualify for the grant of a patent.

The general principles which are deduced from the several judgments of the English as well as Indian Courts are that it is settled law that in an action for infringement of the patent, an injunction would not be granted where serious controversy exists with regard to the validity of the patent itself. It is a rule of practice that if a patent is a new one, a mere challenge at the bar would be quite sufficient for a refusal of a temporary injunction. But a patent is sufficiently old and has been worked, the Court would for the purpose of temporary injunction, presume patent to be valid one. If a patent is more than six years old and there is actual user, it would be safe for the Court to proceed upon this presumption. The fundamental principle of patent law is that patent is granted only for invention which must be new and useful.

19. Mr. Dave has also referred to certain passages from Halsbury law of England. It is stated that a valid patent may be obtained for a new use of a known substance if the use is not obvious, or produces considerable advantages. It is also observed that a combination or collection of integers the production of which has required independent thought, ingenuity or skill, may constitute good subject matter for the grant of the patent, provided that it enables a more efficient result to be

obtained, even though all the integers are old. With regard to the expert evidence, it is observed in Hulsbury's Law of England that a large portion of the evidence in patent cases comprises expert evidence. The object of such evidence is mainly to instruct the Court as to the state of knowledge, the meaning of terms of art or even of complete sentences or paragraphs of a technical character and other surrounding circumstances so as to enable the Court to read the specification with the understanding of the craftsmen to whom it is addressed, and to form a true opinion on the various issues raised. But it is not the function of the witness to enact the part of that craftsmen and to construe the specification or other documents nor should he be asked whether an article or process is an infringement or a document in anticipation.

20. Mr. R. Parthasarathy, learned advocate appearing with Mr. Ayush Sharma and Mr. Pranav S. Trivedi for the respondent No. 2 has submitted that the learned Single Judge has rightly rejected the injunction application and it calls for no interference by the Division Bench and the Appeal should not be entertained. It is submitted that the suit as well as injunction application filed by the appellants are absolutely frivolous and vexatious and the jurisdiction of this Court has been wrongly invoked. He has further submitted that the patent itself is liable to be revoked as it does not satisfy the satisfactory requirement for the grant of patent. He has further submitted that the respondent No. 2 has already made a counter claim for revoking the patent and hence the learned Single Judge has rightly rejected the injunction application.

21. Mr. Parthasarathy has further submitted that the respondent No. 2 has categorically stated that the respondent No. 1 was not the distributor of the respondent No. 2. In fact, the advertisement has been issued by the respondent No. 1 on its own unauthorised way as distributor of respondent No. 2. Since the alleged infringed product has not been sold nor offered for sale by respondent Nos. 1 or 2, the respondents could not be stated to have infringed the patent stated to be issued to the appellants. Since none of the rights conferred by Section 48(a) of the Act has been violated, the learned Single Judge has rightly not entertained the injunction application and not granted interim relief. He has further submitted that the appellants have made mis-statement in order to invoke jurisdiction of this Court. Since no cause of action has arisen in the State of Gujarat the interim injunction application was rightly rejected by the learned Single Judge.

22. Mr. Parthasarathy has further submitted that the appellants have filed suit in Ahmedabad City Civil Court with a malafide intention. The respondent No. 2 has its manufacturing facility in Karnataka. The appellants have also their place of business in Karnataka. However, the action for the alleged infringement has not taken in Karnatana but strangely in State of Gujarat simply on the basis of an advertisement which did not even portray the pipe incorporating the alleged invention of the appellants, that too from a person who is not a distributor of the respondent No. 2.

23. In fact, the respondent No. 1 is the distributor of the appellant No. 2 and the appellants are aware of this fact. Despite this fact, in order to invoke the jurisdiction of the Court at Ahmedabad the appellants have raised the bogie of the advertisement as a cause of action. Since the appellants have not come to the Court at Ahmedabad with clean hands, the injunction application was rightly rejected by the learned Single Judge of this Court.

24. Mr. Parthasarathy has further submitted that the respondent No. 2 has rightly made a counter claim for the revocation of the patent on the ground that it is not new, that it is obvious, the specification does not specifically and clearly describe the invention. The scope of the claim of complete specification has not been sufficiently and clearly defined.

25. Mr. Parthasarathy has further submitted that in terms of Section 107(1) of the Act, in any suit for infringement of a patent, every ground on which it may be revoked under Section 64 shall be available as a ground of defence. He has, therefore, submitted that the appellants' patent is liable to be revoked under Section 64(1)(e), 64(1)(f) and 64(1)(k) of the Act. He has further submitted that the analysis of infringement is a two step process comprising:

(i) Interpretation of the patent claims; and

(ii) Comparison of the properly interpreted claims with the accused devise.

It is further stated that this principle has been laid down in a number of cases. In Rodi & Weinberger v. Henry Showell (1966) RPC 441, the Court of appeals in the UK held that there was no infringement of the patent monopoly unless each and every one of the claimed elements is present in the article which is alleged to infringe the patent and such elements also act in relation to one another in the manner claimed. This decision was approved by the House of Lords in 1969 RPC 367. The same principle was also laid down by Upjohn, L.J. In Van der Lely v. Bamfords in 1961 RPC 296 wherein it was stated that to infringe a patent it must be shown that the invention as claimed in the relevant claim, has been infringed in all essential respects that is to say, upon the true construction of the claims. In Rodi v. Showell reported in 1969 RPC 367, the House of Lords held as follows:

> To constitute infringement the article must take each and every one of the essential integers of the claim.
>
> Thus, an infringement analysis involves comparison of each and every limitation of the claim with the allegedly infringing device. The analysis cannot be performed by comparing the product manufactured by the patentee with the allegedly infringing product. However, this was precisely what has been performed by the respondent. Since the infringement analysis itself is flawed, no relief can be granted on the basis of such analysis.
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> 1. Mr. Parthasarathy further submitted that the appellants had averred in the plaint of the suit that the patent has been granted with 14 claims vide para-5 of the plaint. It can be seen that claims 2 to 14 are dependent claims and only claim 1 is an independent claim. Since dependent claims are dependent on independent claim and introduce further limitation to the elements contained in the independent claim, if it is established that the independent claim is liable to be revoked, then the entire patent is liable to be revoked. He has further submitted that the essential elements of claim 1 have been depicted in the table below para-11 of the plaint. The various elements as claimed therein are:

(1) Additional coupler, (2) Square type threads, (3) Special inner and outer sealing rings, (4) Unique wirelock system, and (5) Inner "O" ring.

He has further submitted that none of these elements is new nor does any of these elements involve an inventive step.

2. He has further submitted that the appellants claim that the square type threads have been designed for the first time in the world by them is not correct. Square type threads in PVC pipe was claimed as early as in 1955 in Patent No. 787,440 dated September, 19, 1955. This patent granted in the UK specifically addresses pipe couplings for "Synthetic Plastic material such as Polyvinyl Chloride". It further provides that the pipe coupling having inter-engaging thread portions, the threads being formed as round, square or Acme threads. The claims of this patent as well as the drawings clearly show the square threads. Thus, the use of square threads in PVC pipes has been known for over 50 years. Hence the claim of the appellants that the square thread has been designed for the first time in the world by him is a false claim. He has further submitted that Bureau of Indian Standards (BIS) had issued standards for basic dimensions of square threads as early as 1968 (IS 4694). Thus, the use of square threads is not new.

3. Mr. Parthasarathy has further submitted that the use of "O" rings as sealing rings in pipes involving fluids is also very well known in the art. The BIS had issued IS 5382; 1985 providing the specifications for Rubber Sealing Rings for Gas, Water and Sewers. In fact, the scope of this standard covers Rubber Sealing Rings for water pipes and for all pipeline material including plastic pipes. This patent talks about pipes coupling for stainless steel well casing which includes the square thread and also "O" rings. This patent claims "O" rings seals are provided to prevent the fluid being pumped from corroding threaded portions. In fact, this patent refers to a US Patent 1,393,057 dated December, 3, 1920 which discloses "O" rings. Thus, sealing rings for preventing the leakage of fluids is also very well known in the art. Hence, the claim of the appellants that special inner and outer sealing rings have been designed for the first time by the appellants are incorrect.

4. Mr. Parthasarathy further submitted that the appellants' claim regarding the additional coupler for joining pipes does not involve any inventive step. It is very well known that two pipes may be joined either by inserting one end of the pipe into another end of the other pipe or by joining two pipes by having a coupler into which the two pipes are inserted for joining. Thus, use of the coupler for joining two pipes is very well known in the art and any person engaged in the manufacturing of pipes and pipe fittings will be well aware of it. For example, the use of coupler for joining two Galvanized Iron (GI) pipes for providing water connections is very well known to every householder. The coupler here is of PVC and the threads on the inner side into which the thread on the outer side of the pipe will be fitted. Thus, joining of two pipes by means of coupler is very well known in the art. He has further submitted that it is not even the claim of the appellants that this coupler has been designed by them for the first time.

5. Mr. Parthasarathy further submitted that the appellants claim that they have designed a unique wirelock for the first time, is also not correct. This wirelock is nothing but a wire of round shape or any other shape made of metal or rubber or plastic, which wire is inserted in a tangential hole made

in the coupler. This wire goes through this tangential hole into the coupler groove. The use of such a wirelock also referred to as splines is also very well known in the pipe literature.

6. Mr. Parthasarathy further submitted that insertion of such a wire through a tangential hole in the coupler is also obvious from a catalogue, published in 1999, by Certain Teed Corporation of USA. Moreover, insertion of wire through tangential hole was disclosed in US Patent No. 3,245,702 titled Leakproof Joint dated August 5, 1965. One of the object of this invention is to provide a coupling or joint that is adapted for connecting members composed of copper, aluminium, stainless steel, plastic, hard rubber, iron and other conventional materials. He has further submitted that there is no novelty in the wire lock system as claimed by appellants in the patent. It is further submitted that the wire through a tangential hole in the coupler for locking the pipe and coupler was known and used by Polytrusions Private Ltd., as early as in 2002. Thus, this patent is liable to be revoked on the ground that it was publicly known or publicly used in India before the priority date of the claim.

7. Mr. Parthasarathy further submitted that none of the 5 allegedly inventive steps claimed in the plaint are really inventive. Each and every item is already known in the art and hence there is no invention and certainly no inventive step. In view of these, the patent is liable to be revoked under Section 64(1)(e) as the invention is not new having regard to the various documents produced on record, all of which are prior to the date of application of the patent. He has further submitted that the patent is liable to be revoked under Section 64(1)(f) as the combination of the 5 elements is obvious and does not involve any inventive step as each and every element claimed by the appellants is publicly known or publicly used in India or with reference to publication in India.

8. Mr. Parthasarathy has further submitted that the patent is liable to be revoked under Section 64(1)(k) as the alleged invention is not patentable in view of the embargo under Section 3(f) of the Act. The system claimed is merely an arrangement of 2 PVC pipes, coupler, the sealing rings and the wirelock as it is only an arrangement or rearrangement of known devices (each one of the 5 elements is a known device). The patent is liable to be revoked under Section 64(1)(i) as the scope of the claim of complete specification has not been sufficiently and clearly defined as, (1) "the one end of the pipe joint" lacks antecedent basis. (2) "the tangential hole" lacks antecedent basis. He has further submitted that the Square threads having the clearances on all sides, which is termed as 'special square threads' is not clear from the specification. Thus, this patent is liable to be revoked under Section 64(1)(i) of the Act. He has further submitted that the said infringement suit is patently false, wrong and defamatory and has been filed with ulterior motive. The nature of the allegations made by the appellants are patently aimed to irreparably damage and destroy the impeccable reputation of the respondent. He has further submitted that there are sufficient reasons for declaring that the allegations made by the appellants against the respondent are false, wrong, without any foundation or basis and not maintainable under the eyes of law. He has, therefore submitted that the learned Single Judge has rightly rejected the injunction application moved by the appellants.

9. In support of his submissions Mr. Parthasarathy has relied on various judgments of the Foreign Courts, Hon'le Supreme Court as well as High Courts including the High Court of Gujarat. A few of them are as under:

(i) In the case of KSR International Co. v. Teleflex Inc. ET.AL. 550 U.S. Supreme Court (2007) page.1. It is held that KSR provided convincing evidence that mounting a modular sensor on a fixed pivot point of the Asano pedal was a design step well within the grasp of a person of ordinary skill in the relevant art. Its arguments, and the record, demonstrate that claim 4 of the Engelgau patent is obvious. In rejecting the District Court's rulings, the Court of Appeals analyzed the issue in a narrow, rigid manner inconsistent with $103 and our precedents. The judgment of the Court of Appeals is reversed, and the case remanded for further proceedings consistent with this opinion.

(ii) In the case of Bernard A. Sakraida v. AG Pro, Inc. reported in 425 U.S. 273. Action was filed for infringement of patent. The United States District Court for the Western District of Texas, adjudged the patent invalid and the Court of Appeals for the Fifth Circuit reversed, 474 F.2d 167, and on petition for rehearing, 481 F.2d 668, remanded for resolution of defendant's appellate court motion for new trial based on newly discovered evidence of patent invalidity. The District Court granted the motion and plaintiff appealed. The Court of Appeals reversed and remanded, 512 F.2d 141, and certiorari was granted. The United States Supreme Court, Mr. Justice Brennan, held that patent No. 3,223,070, entitled "Dairy Establishment," and covering a water flush system to remove cow manure from the floor of a daily barn is invalid for obviousness, since it is a combination patent containing elements all of which are old in daily business and were well known before filing of patent application.

(iii) In the case of Bilcare Ltd., v. Supreme Industries Ltd. reported in 2007 (3) PTC 444 (Del.) it is held that after assessing the pros and cons of these cases the following factors emerge. The patent in question is new one. It was registered in the year 2004. The appellants filed the suit in the year 2006, i.e. after the lapse of two years only. By no stretch of imagination it can be said to be sufficiently old. There are no conflictions on the point that the patent is less than six years old. Secondly, there are tangible grounds for suspicion of the alleged invention. There lies no rub in granting damages which could provide an adequate remedy should the claim succeed. Above all it will not be proper to upset the well reasoned judgment of the trial court at this stage. The trial court has meticulously checked the record with precision and clarity. All the three essential conditions viz., prima facie case, balance of convenience and irreparable loss lean on the side of the respondents. Appeal being merit-less is dismissed. The copy of this judgment be sent to trial court forthwith.

10. After having heard the learned advocates appearing for the respective parties and after having gone through the pleadings of the parties as well as the impugned judgment and order passed by the learned Single Judge refusing to grant interim relief and after having considered various authorities cited before the Court as well as the statutory provisions relevant to the issues involved in this appeal, we are of the view that the order and judgment of the learned Single Judge refusing the interim relief is not sustainable either on facts as well as on law and the same deserves to be quashed and set aside considering the celebrated principles laid down by this Court as well as the

Apex Court for grant of interim relief in the matter like one which we are called upon to decide. While refusing the interim relief to the appellants, the Learned Single Judge has observed that the mere ground of no such combined product found or such combination not found in the market, uptill now is not sufficient ground to consider the product of the appellants as invention for which the patent can be granted. The Learned Single Judge has further observed that as there is no inter-connected or inter-related functioning to each device in the alleged mention of the appellant, it cannot be said that it creates any synergistic effect. It is further observed by the Learned Single Judge that the invention for which the patent is granted, would fall in the category of Section 3(f) being exception to Section 2(j) and 2(ja) of the Act and, therefore, the invention is not patentable as per the provisions of the Act and hence, liable to be rejected. Even while discarding the opinion given by the American Authorities on patent it was observed that the same is not binding on this Court and it was further observed that the appellants have misled the Court by giving only one sided version and suppressed the other relevant circumstances of PCT Report of Austrian, Vienna. The Learned Single Judge has also observed that there was no prima facie case at all on merit for sustaining the patent, but on the contrary, the prima facie case is for revocation of the patent. The Learned Single Judge has found that the conduct of the appellants disentitles them to claim equitable relief. All these findings and observations made by the Learned Single Judge are not tenable in view of the discussion made above in light of the facts found and evidence produced before the Court. International Search Report of Austrian Patent Office is prepared without the aid of 16 drawings. The position of grooves, the thread and the sealings inside the coupling were not known. The appellants were not aware about this report as no specific search was made nor drawings were transmitted to Austria. Even the report itself made it clear that there was no legal status for the purpose of the PTC procedure. As a matter of fact, the Learned Single Judge has not considered the very vital aspect in its true perspective that the patent was granted under Section 48 of the Patent Act whereby the rights of the appellant patentee were statutorily recognized. The law relating to grant of interim relief is well established by now and all the three ingredients, namely, prima facie case, balance of convenience and irreparable loss are present in this case and, therefore, initially the Trial Court has rightly granted interim relief and only when the respondents have filed an application for revocation of patent, the case was transferred to this Court and thereafter, the Learned Single Judge has vacated this interim relief. By vacating this interim relief, the Learned Single Judge has not considered the expert's report and affidavits in their true perspectives.

11. In the case of American Cyanamid Co. v. Ethicon Ltd. (1975) 1 All ER 504, the question of grant of injunction in patent cases has been considered minutely and at length. The principles enunciated therein are as under:

> (a) There is no rule that a plaintiff must make out a prima facie case. "The court no doubt must be satisfied that the claim is not frivolous and vexatious; in other words, that there is a serious issue to be tried".... So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction that the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

(b) It is no part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed agreement and mature considerations.

(c) If damages in the measure recoverable at common law would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however, strong the plaintiffs claim appeared to be at that stage.

(d) If, on the other hand damages would not provide an adequate remedy for the plaintiff...the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial.... He would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.

(e) It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest that relative weight to be attached to them. These will vary from case to case.

(f) Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo.

(g) If the extent of the uncompensatable disadvantage to each party would not differ widely, it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by this affidavit evidence adduced on the hearing of the application. This however should be done only where it is apparent upon the facts disclosed by evidence as to which there is no credible dispute that the strength of one party's case is disproportionate to that of the other party.

26. Applying the above principles to the facts of the present case, we hold that the views expressed by the Learned Single Judge do not prima facie hold the field and find that this is a fit case where interim relief is required to be granted. Accordingly, the order passed by the Learned Single Judge is quashed and set aside and the order of the learned Trial Judge granting ad-interim relief is hereby restored and the said interim relief shall continue till the final disposal of the suit. It is however made clear that ultimately if the appellants fail in succeeding in the suit, the respondents are entitled to the damages to the extent of loss suffered by them for discontinuing their business because of grant of this interim relief. The quantum of loss shall be decided, if need so arises, by the

Court while disposing of the suit on merits. The appellants shall file an undertaking before the Court to this effect.

27. This appeal is accordingly disposed of.

28. In view of disposal of appeal, OJ Civil Application no longer survives and it is accordingly disposed of.

After the judgment is pronounced and the appeal is allowed, Mr. Pranav Trivedi, learned advocate appearing for the respondent prays for stay of the order.

Mr. Y. J. Trivedi, learned advocate for the appellants, however, objected to the said request. Considering the the facts and circumstances of the case, the request made by Mr.Pranav Trivedi for stay of the order is rejected.