

Dispute Resolution Hotline

September 25, 2009

DISPOSE IP CASES IN 4 MONTHS: SUPREME COURT

The Hon'ble Supreme Court of India ("Court") has, by its order dated September 16, 2009, in the matter of *Bajaj Auto Limited* ("Appellant") Vs. *TVS Motor Company Limited* ("Respondent")¹, directed that all courts and tribunals in India must hear matters pertaining to trademarks, copyright and patents on a day-to-day basis and give their final judgment **within four months from the date of filing of the suit**. The said judgment will clearly usher in a new era of urgency in matters pertaining to trademarks, copyright and patents.

Facts of the case:

The Appellant filed a suit before the Madras High Court alleging infringement of its patent No. 195904, under the provisions of the Indian Patents Act, 1970 ("the Act")². The Learned Single Judge granted an interim injunction.³

The Respondent filed an appeal before the Division Bench of the Madras High Court, which appeal was allowed.⁴

Aggrieved by the said order, the Appellant filed an appeal before the Court by way of special leave.

Judgment:

The Court expressed its unhappiness on the progress of the matter, which had been filed in December 2007, had been kept pending before the Single Judge without even the written statement being filed.

The Court, *inter alia*, observed that suits relating to patents, trademarks and copyrights remain pending for a number of years and litigation between the parties is fought mainly on the temporary injunction.

Referring to observations set out in its earlier judgment dated September 07, 2009 passed in the matter of *M/s. Shree Vardhman Rice & Gen Mills vs. Ms. Amar Singh Chawalwala*,⁵ the Court directed all courts and tribunals in India to, *inter alia*, strictly comply with the provisions set out in Order XVII Rule 1(2)⁶ of the Code of Civil Procedure in matters of patents, trademarks and copyrights and conduct the hearing on a day-to-day basis and give the final judgment within four months from the date of filing of the suit.

In the present matter, the Court directed the Respondent to file their written statement before the closure of the Madras High Court for ensuing vacation. Further, all prior interim orders were vacated and substituted with fresh directions including the appointment of a receiver. The Respondent was permitted to sell its products but was required to maintain accurate records/accounts of all sales, whether in India or exports. The Court did not make any observations on the merits of the matter.

Analysis:

The said judgment clearly redefines the manner in which courts in India are expected to dispose of matters pertaining to patents, trademarks and copyrights. By this judgment, a clear emphasis is provided on quick disposal of the underlying suit rather than mere grant of interim relief to protect the interest of the parties pending such disposal.

Interestingly, whilst the said judgment pertains to matters of patents, trademarks and copyrights, it remains to be seen whether the ratio of the said judgment is extended to other forms of intellectual property such as designs, geographical indications etc.

What remains to be seen, is how the parties and courts gear themselves to prepare for final hearings of these matters, which will require tremendous preparation in the form of, *inter alia*, availability of court infrastructure, availability of expert witnesses (an integral component of patent matters) and whether the courts and tribunals need to set up separate benches to hear these matters on a day to day basis.

- Sahil Kanuga & Gowree Gokhale

¹ Civil Appeal No. 6309 of 2009 arising out of S.L.P.(C) No. 13933 of 2009.

² C.S. No. 1111 of 2007.

³ Order dated February 16, 2008.

⁴ Order dated May 18, 2009.

⁵ S.L.P. (C) No. 21594 of 2009

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6 Order 17 Rule 1. (2) Costs of adjournment.—In every such case the Court shall fix a day for the further hearing of the suit, and 2[shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit]:

3[Provided that —

(a) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary,

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(c) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment,

(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(e) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.]

Note.—For provisions as to commencement and application of the above amendments made by Act 46 of 1999, Repeal and Savings provision, see Section 32(2)(s) of the CPC (Amendment) Act, 1999 (Act 46 of 1999), given in the Appendices.

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