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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(COMM) 579/2018

LG ELECTRONICS INDIA PVT LTD Plaintiff

Through: Mr. Hemant Singh, Ms. Mamta Jha &
Mr. Pranav Narain, Advs.

Versus

BHARAT BHOGILAL PATEL & OTHERS Defendants

Through: Mr. Abhishek Ghai, Adv. for Mr.
Sanjeev Narula, Adv. for D-2&3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **20.02.2018**

1. None appears for the defendant no.1.
2. The counsel for the plaintiff states i) that on the complaint of defendant no.1 that the goods being imported by the plaintiff infringe the patent of the defendant no.1, the defendants no.2 and 3 being the Customs Authorities interfered with the said imports; ii) that the plaintiff instituted this suit for declaration that the complaint of the defendant no.1 to the defendants no.2 and 3 Customs Authorities is groundless and for restraining the defendant no.1 from interfering with the imports of the plaintiff on the ground of the goods subject matter thereof being in infringement of the patent of the defendant no.1; iii) that the plaintiff, prior to the complaint aforesaid of the defendant no.1, had filed a petition before the Intellectual Property Appellate Board (IPAB) for revocation of the patent claimed by the defendant no.1; iv) that vide interim order dated 13th July, 2012 in this suit, the defendants no.2 and 3 Customs Authorities were restrained from interfering with the imports upon the complaint of the defendant no.1

until the defendant no.1 approaches the Civil Court for infringement of its patent and the said Court directs detention of the goods and also restraining the defendant no.1 from extending any such threats of infringement of the patent; v) that FAO(OS) No.361/2013 preferred by the defendants no.2 and 3 was dismissed in default of appearance but has since been restored and is pending consideration; vi) that the defendant no.1 has since filed a civil suit in the Bombay High Court against the plaintiff qua infringement of the said patent and in which civil suit, there is no interim order till now.

3. The counsel for the plaintiff thus states that the present suit can be disposed of by observing that the Customs Authorities will comply with the interim order dated 13th July, 2012 in this suit.

4. The counsel for the defendants no.2 and 3 Customs Authorities states that vide order dated 12th August, 2013 in FAO(OS) No.361/2012 supra and which order continues to be in force, the operation of the order dated 13th July, 2012 has been stayed for the duration of the appeal, however leaving it open to the plaintiff to seek remedies in law against the order of the Customs Authorities seizing the goods of the plaintiff.

5. The counsel for the plaintiff on enquiry states that the plaintiff is continuing to import the goods and the defendants no.2 and 3 Customs Authorities are not interfering therewith.

6. The counsel for the defendants no.2 and 3 Customs Authorities also states that the plaintiff's goods are being cleared however on furnishing of a bond by the plaintiff.

7. The counsel for the plaintiff controverts that any bond is being furnished.

8. On enquiry it is further informed that the defendant no.1 has not preferred any appeal against the interim order dated 13th July, 2012.

9. Though after being told that the defendant no.1 has been appearing in person and is a resident of Mumbai, I was of the opinion that intimation of the next date of hearing in this Court be given to the defendant no.1 before passing any final order but in view of the fact that the defendant no.1 has chosen not to prefer an appeal against the order dated 13th July, 2012 though affecting the defendant no.1, need therefor is not felt.

10. I am also of the view that the defendant no.1, in accordance with the order dated 13th July, 2012, having initiated proceedings before the Bombay High Court, the question/s as would arise for adjudication in this suit i.e. whether the patent of the defendant no.1 is valid or not and / or whether the goods of the plaintiff are in infringement of the said patent, are best left to be decided in the suit filed by the defendant no.1 before the Bombay High Court instead of in this proceeding.

11. In this view of the matter, inspite of pendency of FAO(OS) No.361/2012 and in which it is stated there is no stay of proceedings in this suit, it is not deemed expedient to keep this suit pending.

12. The suit is disposed of with a direction that the defendants no.2 and 3 Customs Authorities to continue to comply with the interim orders in this suit as well as of the Division Bench in FAO(OS) No.361/2012 as has been represented hereinabove and with liberty to the defendant no.1 to seek

interim orders in the suit filed by him before the Bombay High Court. Till then, the defendant no.1 to be also bound by the orders in the suit as well as in the appeal.

No costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

FEBRUARY 20, 2018

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