

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION(L)NO. 2867 OF 2014**

Bharat Bhogilal Patel

..Petitioner

Vs.

Union of India and Others

..Respondents

Mr. Shyam Mehta, Senior Counsel a/w Mr K. R. Parekh,for the  
Petitioner.

Mr. Advait Sethna a/w Mr Parag Vyas,for Respondent Nos. 1 to 3.

Dr Birendra Saraf a/w Ms Bhagwati Trivedi i/b M/s Bhagwati and  
Co,for Respondent No.4.

**CORAM :- S.C. DHARMADHIKARI &  
B.P. COLABAWALLA, JJ.**

**DATE :- SEPTEMBER 3, 2015.**

**P. C.:**

By this Petition under Article 226 of the Constitution of  
India, the Petitioner has challenged the order dated 12<sup>th</sup> June, 2012  
passed by the third Respondent Board. The third Respondent is the

Intellectual Property Appellate Board. After the Writ Petition was argued for some time, both sides have agreed that the following order may be passed, which will serve the ends of justice:-

(a):- The order passed on 12<sup>th</sup> June, 2012 by the Intellectual Property Appellate Board in *M. P. Nos. 41 & 42 of 2012 in TRA/05/2008/PT/MUM & TRA/06/2008/PT/MUM M/s. Aditi Manufacturing Co.(Applicant) V/s M/s Bharat Bhogilal Patel, the Controller of Patents and Designs and Another(Respondents)*, is quashed and set aside. The parties agree that this course is adopted essentially to facilitate the Petitioner before us to inspect the record and then contest the proceedings, particularly, in relation to an application for bringing additional documents on record during the course of the proceedings before the third Respondent Board.

(b):- In an Application dated 27<sup>th</sup> December, 2011 which invokes Order 41 Rule 27 of the Code of Civil Procedure, 1908 and powers analogous thereto conferred on 3<sup>rd</sup> Respondent, being M. P. Nos. 41 and 42 of 2012, the parties agree that the Board shall first take up these Applications and after hearing both sides pass appropriate

order thereon in accordance with law.

(c):- In the event the Respondent No.4 M/s Aditi Manufacturing Company intends to produce documents in addition to which are referred to in these Applications/Miscellaneous Petitions, it may make an application in that regard within two weeks from today and serve a copy thereof on the Petitioner Bharat Bhogilal Patel.

(d):- The Petitioner is at liberty to file a reply or opposition to this additional application, as well.

(e):- In the event the application as aforesaid is not filed within two weeks, a right to file the same shall stand forfeited.

(f):- The Appellate Tribunal shall endeavor to dispose of the Applications referred above expeditiously.

(g):- The parties agree that they will not seek any adjournment but co-operate with the Board in early disposal of the Appeal.

(h):- It is hereby agreed between the parties that without prejudice to their respective rights and contentions, the orders passed on these Applications would be made subject matter of challenge in substantive proceedings and the challenge thereto shall not be raised independently and by filing any Writ Petitions or other proceedings in this Court meaning thereby that if any of them is affected adversely by the orders on these Applications then, while impugning the final orders of the Board, the parties will incorporate appropriate grounds also to challenge the orders in these Miscellaneous Applications. These are thus, understood to be interlocutory orders. After the above process is concluded, the Tribunal shall also endeavor to dispose of the main proceedings namely TRA/05/2008/PT/MUM & TRA/06/2008/ PT/ MUM expeditiously.

(i):- The parties agree that the Board shall proceed and consider these Applications as also the main proceedings *de-novo* and pass appropriate orders thereon in accordance with law uninfluenced by any observations, findings and conclusions rendered earlier.

(j):- Needless to clarify that in the event any documents are permitted to be tendered additionally and by virtue of the orders passed in Miscellaneous Petitions No. 41 and 42 or further applications pursuant to our liberty, leave is granted to the Petitioner to apply to the Board for summoning the deponent of any affidavits or documents in the nature thereof for being cross examined and such applications, as well must be dealt with in accordance with law and appropriate orders be passed thereon after hearing both sides.

(k):- Our granting of this liberty and leave to Bharat Bhogilal Patel does not mean that we have expressed any opinion much less that there is any right of cross examination created and conferred by law in Bharat Bhogilal Patel.

(l):- The order passed on 13<sup>th</sup> November, 2014 in this Writ Petition to continue till 3<sup>rd</sup> Respondent Board passes the final orders. We direct that during pendency of the proceedings before the Board and for a period of four weeks after conclusion of the same, the

Petitioner in this Petition shall not sue, prosecute or initiate any proceeding against the contesting Respondent No.4 in any Court of law or Tribunal or Legal Forum.

2 We order accordingly. All directions be taken to have been issued by us by consent of parties. The Writ Petition is disposed of.

( B. P. COLABAWALLA, J.)

(S. C. DHARMADHIKARI, J.)