



GAHC010278402023

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : FAO/1/2024

M/S SUMOTEK INNOVATION PVT LTD AND ANR.
A PRIVATE LIMITED COMPANY, INCORPORATED UNDER THE COMPANIES
ACT, 1956, REPRESENTED BY SRI GANESH SWAMY, SON OF LATE ANGU
SWAMY, ONE OF THE DIRECTOR/OFFICERS DULY AUTHORISED BY ITS
BOARD OF DIRECTORS, HAVING ITS OFFICE AT 602, WING B, DLH METRO
VIEW, PLOT NO. 195, PT. J.P NAGAR, ANDHERI(W) PO MUMBAI, 400058.
MAHASHTRA,

2: SRI GIRISH MANOHARRAO BACHATE
S/O MANOHARRAO BACHATE
RESIDENT OF PARIJAT COLONY
NEAR PRAKASH NAGAR
BARSHI ROAD
PO LATUR
41351

VERSUS

ASSAM POWER DISTRIBUTION CO. LTD AND ANR.
REPRESENTED BY ITS MANAGING DIRECTOR, HAVING ITS REGISTERED
OFFICE AT BIJULI BHAWAN, A.T ROAD, PALTAN BAZAR, GUWAHATI
781008, KAMRUP MASSAM

2:M/S INTELLISMART INFRASTRUCTURE PVT. LTD.
A PRIVATE LIMITED COMPANY INCORPORATED UNDER THE COMPANIES
ACT REPRESENTED BY ITS MANAGING DIRECTOR
HAVING ITS PRINCIPAL PLACE OR REGISTERED OFFICE AT UNITECH
BUSINESS PARK
GROUND FLOOR
TOWER A
SECTOR 41
SOUTH CITY PO GURGAON 12200

Advocate for the Petitioner : MR. B J MUKHERJEE



Advocate for the Respondent : SC, APDCL

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER (ORAL)

Date : 19-03-2024

The instant appeal under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 (for short 'the Code') is directed against the order dated 20.09.2023 passed by the learned Additional District Judge No. 1, Kamrup (M) at Guwahati in Misc(J) Case No. 60/2022 arising out of Title Suit No. 02/2022. It is relevant to mention at this stage that in the impugned order it has been mentioned as Misc(J) Case No. 60/2023 which ought to have been Misc(J) Case No. 60/2022.

2. From the materials on record it transpires that the Appellant No. 1 and the Appellant No. 2 as plaintiffs have instituted a suit being Title Suit No. 02/2022 being aggrieved by the actions of the defendants in using the patent of the plaintiffs. Under such circumstances, the said suit was filed seeking declaration of right, title and interest in respect of the patent bearing No. 208216 which was granted with effect from 13.05.2004 for a period of 20 (Twenty) years; for compensation and damages along with a prayer for permanent and perpetual injunction restraining the defendants, their men, servants, attorneys, agents or any other person claiming under them from manufacturing, selling, installing, using or otherwise dealing with the smart meters or products under whatever name using the technology and process invented and patented by the plaintiff No. 2 as prepaid-postpaid electricity supply machine under Patent No. 208216.

Along with the said suit the plaintiffs also filed an injunction application under Section 108 of the Patents Act, 1970 read with Order XXXIX Rules 1 and 2 read with Section 151 of the Code. The ad-interim injunction which was sought for was similar to the relief of permanent injunction sought for in the suit.

3. The record reveals that the defendant No. 2 had filed a written statement in the suit and a written objection to the injunction application. Various preliminary objections were raised to the maintainability of the suit as well as on the merits, the case of the plaintiffs was denied. Further to that it is also seen that there was an additional written statement filed bringing further additional pleadings.

4. The written objection so filed also states that the plaintiffs have not been able to make out a prima facie case for grant of injunction and the entire case of the plaintiff No. 1 is on a concocted story. On the basis of the said pleadings, more particularly, the injunction application, the plaint and the documents and the written objections so filed by the defendant No. 2, the learned Trial Court heard the injunction application and vide the impugned order dated 20.09.2023 rejected the said injunction application.

5. This Court has duly perused the said order impugned in the instant proceedings. In the said order, it is seen that the learned Trial Court though observed that there is an agreement between the plaintiff No. 1 and the plaintiff No. 2 but there is no stipulation in the agreement as to what are the terms and conditions of the agreement between the plaintiff No. 1 and the plaintiff No. 2. It was also observed that there was no authority letter from the plaintiff No. 2 to institute the instant suit by the plaintiff No. 1 for and on behalf of the plaintiff No. 2 with regard to the contract between the opposite parties in the year 2021 i.e. prior to entering into agreement vide Annexure-C. On that basis, the learned

Trial Court without further dealing with the principles for grant of an injunction dismissed application on the ground that the plaintiff No. 1 had no locus standi to file the case. Being therefore aggrieved the instant appeal has been filed.

6. This Court have heard the learned counsel appearing on behalf of the Appellants as well as the respondents and have also perused the materials available on records including the patent certificate issued by the Controller of Patents of Government of India in respect to the Patent No. 208216. From a perusal of the said certificate, it reveals that the said certificate was issued on 19.07.2007 and the patent was granted to the plaintiff No. 2 for the invention prepaid postpaid electricity supply machine for the term of 20 (Twenty) years from 13.05.2004 in accordance with the provisions of the Patents Act, 1970. Therefore, from the said patent certificate, it is apparent that the Patent No. 208216 was granted in favour of the plaintiff No. 2 would remain in operation till 13.05.2024.

7. This Court further have taken note of that there is a document at page-89 of the memo of appeal which shows the plaintiff No. 2 as the grantee and the plaintiff No. 1 has been shown as the patentee. It is also seen from the said very document that for the 20th year the renewal was made vide a renewal certificate No. 9658 and the renewal period was from 13.05.2023 to 13.05.2024.

8. This Court have also taken note of the Deed of Assignment entered into between the plaintiff No. 1 and the plaintiff No. 2 dated 02.09.2022. From the said document, it reveals that the plaintiff No. 2 had assigned by way of transfer the rights, title and interest in the patent application and in the said invention to the plaintiff No. 1 absolutely and forever. The said assignment has however to be taken by keeping in mind that the said assignment is effective from the Deed



of Assignment being made on 02.09.2022.

9. This Court had also taken note of that in the objection filed by the respondent No. 2, it was duly mentioned that the respondent Nos. 1 and 2 herein had entered into an agreement and on the basis thereof, the respondent No. 2 had issued an RFP bearing No. IIPL/21-22/AMI/RFP/008 and had entered into various agreements with M/S Ashoka Buildcon Limited vide a Purchase Order dated 01.04.2022; CyanConnode Private Limited vide Purchase Order dated 19.04.2022; Schneider Electric Private Limited vide Purchase Order dated 12.04.2022 and Sinhal Udyog vide Purchase Order dated 12.04.2022. However, it has also been mentioned that the business relationship with M/s. Ashoka Buildcon Limited had been terminated and the remaining work has been issued to one M/s. Purbanchal Enterprise vide Purchase Order dated 16.10.2023. It was also mentioned that pursuant to the above purchase orders, the respondent No. 2 is procuring the smart meters from multiple vendors and is not manufacturing on its own and the respondent No. 2 is merely an implementing agency/service provider facilitating the installation of the smart meters.

10. This Court also finds it relevant to take note of the submission of the learned counsel appearing on behalf of the respondent No. 2 thereby supporting the order of the learned Trial Court to the effect that the Appellants herein had measurably failed to demonstrate that the products installed by the respondent No. 2 fall within the scope of the said patent of the Appellant No. 2. She submitted that the Appellants neither conducted any infringement analysis nor had enclosed any documents to show the infringement of the patent. It is also submitted that the Appellants had failed to demonstrate that the patent is a Standard Essential Patent by failing to provide mapping of the patent on the standard. Further to that it is also submitted that this Court is required to look

into the said aspect of the meters and the strength of the patent needs to be tested before an injunctive relief can be granted.

11. On the question of balance of convenience, the learned counsel for the respondent No. 2 also submitted that the patent is going to expire in less than two months i.e. on 13.05.2024 and therefore, no injunctive relief should be granted. Further any injunctive relief granted would affect the public interest as the smart meters which are presently being installed would have to be stopped resulting in grave difficulties to the respondent No. 1 and the public in general.

12. In the backdrop of the above, this Court while taking up the order passed by the learned Trial Court finds it relevant to observe that the learned Trial Court rejected the application merely on the basis that there was no document to show that the plaintiff No. 2 permitted the plaintiff No. 1 to file the suit as well as there was no authority from the plaintiff No. 2 to the plaintiff No. 1 in respect to the Agreement entered into between the respondent Nos. 1 and 2 in the year 2021. This aspect was noticed by the learned Trial Court in view of the fact that the Deed of Assignment was dated 02.09.2022 whereas the Agreement between the respondent Nos. 1 and 2 was in the year 2021.

13. This Court had put a specific query upon the learned counsel appearing on behalf of the Appellants as to whether the plaintiff No. 2/Appellant No. 2 had filed any vakalatnama in the said suit or any document or any documents were filed in the suit empowering the plaintiff No. 1 to file the suit on behalf of the plaintiff No. 2. Both the learned counsels appearing on behalf of the Appellants expressed their ignorance to that aspect. This Court also finds it relevant to note that in the instant appeal also there is only one vakalatnama filed that too, on behalf of the Appellant No. 1 and there is no vakalatnama on behalf of the Appellant No. 2. In that view of the matter, the instant appeal has to be

construed to be an appeal only filed by the Appellant No. 1 and not by the Appellant No. 2. Therefore, the observations by the learned Trial Court which, obviously being prima facie in nature that the plaintiff No. 2 did not empower the plaintiff No. 1 to file the suit cannot be brushed aside.

14. In the backdrop of the above, let this Court now deal further with the impugned order. The plaintiff No. 1 or for that matter the Appellant No. 1 had a Deed of Assignment made by the plaintiff No. 2 on 02.09.2022 and in the records of the Controller of Patents, the Appellant No. 1/plaintiff No. 1's name had been recorded as a patentee. Therefore, irrespective of the plaintiff No. 2 having not filed the suit or for that matter, the plaintiff No. 2 not empowering the plaintiff No. 1 to file the suit, the suit otherwise would have been maintainable so far as the rights of plaintiff No. 1 is concerned. Therefore, the next question arises as to whether the learned Trial court should have granted the injunction as sought for or for that matter this Court in exercise of the power under Order XXXIX Rule 1 and 2 of the Code should grant an injunction in favour of the Appellant No. 1 on the basis of the application for injunction filed before this Court in the present Appeal.

15. This Court have duly taken note of the contentions of the plaint and relief sought for which shows that the plaintiff No. 1/Appellant No. 1 had sought for various damages. It is also clear from the documents which have been placed by the plaintiff No. 1 with the suit (which are part of the instant appeal) that the right of the plaintiff No. 1/Appellant No. 1 at best would be till 13.05.2024 and as on date, only one and a half month remains. This Court had also taken into consideration that while the respondent No. 2 pursuant to the tender issued by the respondent No. 1 have issued various purchase orders to various parties and these parties who supplied are not parties to the suit which also touches on the

maintainability of the suit to be decided at the Trial. Be that as it may, the question of maintainability can be looked into, to discern as to whether there is a prima facie case.

16. Taking into account the above aspect, this Court is of the opinion that the plaintiff No. 1/Appellant No. 1 may have the locus standi to file the suit but the plaintiff No. 1 in the opinion of this Court does not have a prima facie case for grant of an injunction.

17. On the question of balance of convenience in favour for grant of injunction, it would be seen from the materials on record that the right of the plaintiff No.1/Appellant No. 1 is only there till 13.05.2024 in respect to the patent, if assuming that the plaintiff No. 1 has the patent in respect to the smart meters. Under such circumstances, any injunction at this stage may affect the distribution of those meters which would not be in public interest.

18. On the question of irreparable loss, harm and injury, the plaintiff No. 1/Appellant No.1 has not been able to make out a case for the same *inasmuch* as if the plaintiff No. 1/Appellant No. 1 is successful in the cause of the suit, it can be duly compensated.

19. Under such circumstances, this Court is not inclined to interfere with the order dated 20.09.2023 or grant any injunction as prayed, for the aforementioned reasons. However, this Court makes it clear that the locus standi of the plaintiff No. 1/Appellant No. 1 to file the suit on its own, on the basis of the documents, has to be decided at the trial of the suit and the observations made in the impugned order dated 20.09.2023 to the effect that the plaintiff No. 1/Appellant No. 1 does not have the locus standi to file the case should not influence the Trial Court in deciding the suit.



20. With the above, the instant appeal stands dismissed. No costs.

JUDGE

Comparing Assistant