



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
NOTICE OF MOTION CD NO. 820 OF 2018  
WITH  
NOTICE OF MOTION CD NO. 1604 OF 2019  
IN  
COMMERCIAL IP SUIT NO. 359 OF 2017**

M/s. TVS Electronics Ltd. ... Applicant

In the matter between:

Bharat Bhogilal Patel ...Plaintiff

*Versus*

M/s. TVS Electronics Ltd. ...Defendant

**AND  
NOTICE OF MOTION CD NO. 1602 OF 2019  
WITH  
NOTICE OF MOTION CD NO. 1593 OF 2019  
IN  
COMMERCIAL IP SUIT NO. 927 OF 2018**

Kalelkar Surgicals Pvt. Ltd. ... Applicant

In the matter between:

Bharat Bhogilal Patel ...Plaintiff

*Versus*

Kalelkar Surgicals Pvt. Ltd. ...Defendant

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Mr. Bhuvan Singh a/w. Jinal Shah a/w. Shweta Rathod i/b. Elixir Legal Services  
for the Plaintiff.

Mr. H.W. Kane a/w. Mr. Kanak Kadam i/b. W.S. Kane & Co. for Defendants.  
Mr. Vinit Jain a/w. Mr. Gaurav Mhatre & Mr. Ashok Varma for Defendant No. 2  
in COMIP/359/2017.

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**CORAM** : **ARIF S. DOCTOR, J.**  
**RESERVED ON** : **21<sup>st</sup> APRIL 2026**  
**PRONOUNCED ON** : **7<sup>th</sup> MAY 2026**

**P.C.**

1. All the captioned Suits have been filed for infringement of two Patents which were granted to the Plaintiff vide Orders dated 14<sup>th</sup> August 2003 and 27<sup>th</sup> October 2003 respectively. The first patent is titled '*Improved laser marking and engraving machine*', and the other, '*Process of manufacturing engraved design articles on metals or non-metals*' (“**the said patents**”).
2. Briefly stated, it is the common stand of the Defendants in all the captioned Suits that the Plaintiff did not have locus and/or any cause of action for filing the said Suits since the above-mentioned patents had been revoked on the date when the captioned Suits were filed. It is thus the case of the Defendants that a Suit for infringement of the said patents would not be maintainable. Accordingly, the Defendants in the captioned Suits have filed the Notice of Motion No. 1604 of 2019, Notice of Motion No. 1602

of 2019 and Notice of Motion No. 1593 of 2019 under the provisions of Order XIII-A of the Civil Procedure Code, 1908 ('CPC'), seeking summary dismissal of the Suit. The Defendant in Suit No. 359 of 2017 has additionally filed Notice of Motion No. 820 of 2018 under the provisions of Order VII, Rule 11 of the CPC, seeking rejection of the Plaint on the ground that the same does not disclose a cause of action.

3. However, before advertng to the rival contentions, it is useful for context to set out the following facts:
  - i. After the grant of the said patents, several applications seeking revocation of the said patents came to be filed before the Intellectual Property Appellate Board (IPAB), Chennai, including an application filed by one Aditi Manufacturing Company. The IPAB, vide an order dated 12<sup>th</sup> June 2012 (“**first order**”), allowed the application filed by Aditi Manufacturing Company and revoked both the said patents.
  - ii. The Plaintiff assailed the first order by filing Writ Petitions before the Madras High Court in which the Madras High Court, pending the

hearing of the said Writ Petitions vide an Order dated 19<sup>th</sup> November, 2012, stayed the First Order.

- iii. The IPAB thereafter, vide subsequent orders dated 14<sup>th</sup> March, 2013 (“**second order**”) and 7<sup>th</sup> March, 2014 (“**third order**”), allowed two other applications which had also sought revocation of the said Patents.
- iv. On 8<sup>th</sup> October 2014, the Madras High Court disposed of the Writ Petitions essentially on the ground of lack of jurisdiction. The Madras High Court, however, continued the stay granted earlier and also granted the Plaintiff liberty to initiate appropriate proceedings before this Court to challenge the first order. The Plaintiff, accordingly, in October 2014, filed Writ Petition No. 2867 of 2014 in this Court impugning the first order.
- v. This Court, vide an order dated 3<sup>rd</sup> September, 2015, set aside the first order and remanded the matter back to the IPAB for consideration afresh.

vi. It is not in dispute that after the Madras High Court stayed the First Order, the Plaintiff has been paying the renewal fees for the said Patents and that the Controller of Patents has continued to maintain both the said Patents as “in force” on the e-Register of Patents.

**Defendant’s Submissions seeking a summary judgment under Order**

**XIII-A of the CPC:**

4. Mr. Kane, Learned Counsel appearing on behalf of the Defendants at the outset, submitted that though the first order had been set aside, the IPAB had, by the second and third orders (“**subsequent orders of revocation**”), independently revoked the said patents. He submitted that the Plaintiffs had not admittedly even assailed the subsequent orders of revocation, and therefore the Plaintiff could not have filed any of the captioned Suits since the said patents stood independently revoked by the subsequent orders of revocation.
5. Mr. Kane then pointed out that, the IPAB had expressly clarified in both the subsequent orders of revocation that it would be open to the Plaintiff, based on the outcome of the Writ Petitions filed by the Plaintiff before the

Madras High Court, to move an appropriate application before the IPAB in accordance with law. He submitted that despite the liberty granted by the IPAB, the Plaintiff had not taken any steps to impugn either of the subsequent orders of revocation either before the IPAB or before any Court.

6. Mr. Kane then in support of his contention that the IPAB had, by the second order, independently revoked the said Patents, invited my attention to paragraph 6 of the second order, which reads thus:

*“We have revoked the Patent on the ground that the invention was known, that there is neither any novelty nor any inventive step. It is true that originally the interim stay was granted by the Hon’ble Madras High Court but it was a limited stay. In any event, since there was no counter statement before us and the subject matter is the same patent, we do not see why we should keep these matters pending on our file. Therefore, in view of the orders passed in TRA/5 & 6/2008 relating to the same patents, these ORA’s are allowed. It is needless to say that the result in the writ petitions filed before*

*Hon'ble Madras High Court will entitle the parties to move appropriate applications before us in accordance with law. No costs."*

Mr. Kane then also pointed out that the IPAB had specifically in paragraph 8 of the third order incorporated the above reasons recorded in paragraph 6 of the second order. He thus submitted that it was clear from a plain reading of the subsequent orders that the said Patents had been independently revoked. He thus submitted that the subsequent orders of revocation were, therefore, not entirely based on the First Order.

7. Mr. Kane then pointed out that the Madras High Court had, by interim orders dated 19<sup>th</sup> November, 2012; 8<sup>th</sup> August, 2014; and 8<sup>th</sup> October, 2014, passed in the Writ Petitions filed by the Plaintiff, stayed the operation and all further proceedings from time to time until 8<sup>th</sup> November, 2014. He pointed out that all these interim orders had been entered into the e-Register of Patents, extracts of which were annexed at pages 34 and 51 of the Complaint in Suit No. 359 of 2017. He pointed out from the said extracts that the same also clearly showed that the said patents stood revoked vide

the subsequent orders of revocation as reflected on the Register of Patents itself.

8. Mr. Kane then submitted that this Court had, vide a consent order dated 3<sup>rd</sup> September 2015, passed in Writ Petition (L) No. 2867 of 2014, only set aside the first order and had remanded the matter back to the IPAB for *de-novo* hearing without expressing any opinion on merits. He submitted that the Plaintiff had thereafter not taken any steps to prosecute the matter before the IPAB nor had the Plaintiff approached the IPAB and/or made any application before the IPAB for recalling the subsequent orders of revocation. Basis this, he submitted that the subsequent orders of revocation had attained finality and, being unchallenged, the said patents stood revoked by the subsequent orders of revocation.
9. Mr. Kane submitted that unless the subsequent orders of revocation were recalled and/or set aside by a Court or Tribunal of competent jurisdiction, the subsequent orders of revocation would continue to be valid and subsisting. He submitted that it was not open to the Plaintiff to *suo moto* treat the subsequent orders of revocation as being ineffective and void. In

support of his contention, he placed reliance upon the decisions of the Hon'ble Supreme Court in the case of *Anita International v. Tungabhadra Sugar Works Mazdoor Sangh*<sup>1</sup>, and *Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group*<sup>2</sup>.

10. Mr. Kane then submitted that the Plaintiff had suppressed the aforesaid material facts from this Court and had misrepresented that the said Patents were valid, subsisting, and enforceable. He pointed out that, in paragraph 11 of the Plaint in Suit No. 359 of 2017, the Plaintiff had only set out the facts relating to the setting aside of the first order and had, on that basis, asserted that the said patents were valid and enforceable. He pointed out that the Plaintiff had, however, conveniently failed to disclose the existence of the subsequent orders of revocation and had also offered no explanation whatsoever as to how, despite the subsequent orders of revocation, the said Patents could still be treated as valid and enforceable.
11. Mr. Kane submitted that even though the Plaintiff was aware of the subsequent orders of revocation, the Plaintiff continued to pay renewal fees

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<sup>1</sup> (2016) 9 SCC 44.

<sup>2</sup> (2011) 3 SCC 363.

from 2013 onwards, on which basis the said Patents had been renewed for the full term of 20 years. He submitted that the renewal of a patent was purely a ministerial act performed by the Registry upon receipt of the renewal fee. He submitted that such renewal cannot override the subsequent orders of revocation and could not revive a dead patent, nor could it nullify judicial orders revoking a patent. In support of his contention that the renewal of a patent is purely a ministerial act, he placed reliance upon the decision of the Delhi High Court in the case of *Dr. (Ms.) Snehlata C. Gupte v. Union of India & Ors*<sup>3</sup> and *Sugen Inc. & Ors. v. A. Rao & Anr.*<sup>4</sup>

12. Mr. Kane then invited my attention to the Affidavit filed by the Assistant Controller of Patents & Designs to point out that the Controller had clarified that, upon revocation of a patent by the competent authority, the legal effect of any payment of renewal fees stands nullified. He further pointed out that the Affidavit also recorded that any continued payment of renewal fees in respect of a revoked patent would amount to a

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<sup>3</sup> WP. (C) No. 3516 of 2007, decided by the Delhi High Court

<sup>4</sup> 2013 SCC OnLine Del 1124

misrepresentation. Basis this, Mr. Kane submitted that the Plaintiff had misled the Patent Office by making payments of renewal fees in respect of patents that had already been revoked and therefore could not take advantage of the fact that the said fees were accepted and the patents were shown as renewed. He reiterated that the ministerial act of accepting renewal fees can never have the effect of defeating and/or overreaching judicial orders, and that the entries in the e-Register were expressly subject to subsisting judicial orders and did not in any manner override or dilute the effect of an order of revocation.

13. Mr. Kane then submitted that in the facts of the present case in none of the Suits would any additional evidence have to be led since the revocation of the said Patents stood established by the extracts of the e-Register produced and relied upon by the Plaintiff in the Plaint itself. He submitted that the Plaintiffs, therefore, had no real prospect of succeeding in the Suits. On this basis, he submitted that the Defendants were entitled to a summary dismissal of the Suits under the provision of Order XIII-A of the CPC.

**Submissions in Notice of Motion No. 820 of 2018**

14. Mr. Kane submitted that the said Patents had been revoked by the subsequent order of revocation and were therefore not valid and subsisting as on the date of institution of the above suit. He pointed out that in paragraph 7 of the Plaintiff's Affidavit in Reply, filed in the captioned Notice of Motion, the Plaintiff had admitted that the said orders were passed by the IPAB. Mr. Kane then pointed out that the subsequent orders of revocation had also been taken note of by the Patent Office by making the necessary entries in the e-Register of Patents, extracts whereof were filed by the Plaintiff at pages 34 and 51 of the plaint.
15. He then submitted that the Plaintiff had deliberately suppressed the subsequent orders of revocation in the Plaint nor had the Plaintiff explained how and on what basis, despite the subsequent orders of revocation, the Plaintiff could contend that the said Patents were valid and subsisting. He reiterated that unless the said orders were recalled, set aside and/or quashed, they would continue to remain in force. Consequently,

there was no cause of action as on the date of institution of the suit and/or the suit for infringement of patent was barred under the Patents Act. It was thus submitted that the reliefs prayed for by the Plaintiff could not be granted.

16. Mr. Kane submitted that the Plaintiff had knowingly and deliberately suppressed the subsequent orders of revocation from in the Plaint only in an attempt to mislead this Court on the aspect of maintainability of the suit. He submitted that had the Plaintiff disclosed the subsequent orders of revocation, this Court would not have entertained the said suit. He also submitted that when the Plaintiff was confronted with the subsequent order of revocation, the Plaintiff admitted that the said patents had been revoked by the said Orders but wrongfully claimed the benefit of payment of renewal fees and consequent continuation of the said patents.
17. Basis the above, he submitted that the present Suit constituted a clear abuse of the process of law and of this Court. He submitted that the Plaintiff, through clever drafting, had merely created an illusion of a cause of action, which here, in fact was none. He submitted that this became apparent upon

a thorough reading of the Plaint. He then placed reliance upon the decisions of the Hon'ble Supreme Court in the cases of *Dahiben v. Arvindhbai Kalyanji Bhanusali*<sup>5</sup> and *T. Arivandandam v. T.V. Satyapal & Anr.*<sup>6</sup> to submit that when a cause of action is created by clever drafting, the Plaint must be rejected. He submitted that these decisions would squarely apply to the facts of the present case and, therefore, that Notice of Motion No. 820 of 2018 be made absolute.

**Submissions of the Plaintiff:**

18. Mr. Singh, learned counsel appearing on behalf of the Plaintiff, at the outset, did not dispute that the subsequent orders of revocation were passed by the IPAB and were not challenged by the Plaintiff. He, however, submitted that the Plaintiff did not need to challenge the subsequent orders of revocation, as they did not have any legal effect, nor did they cause any legal damage, prejudice or legal injury to the Plaintiff since the said Patents were renewed and treated as being 'in force' even after the subsequent orders of revocation had been passed. He pointed out that

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<sup>5</sup> (2020) 7 SCC 366.

<sup>6</sup> (1977) 4 SCC 267.

despite the existence of the subsequent orders of revocation, the Controller had extended the validity of the Patents without qualifying the said extensions under the provisions of Section 67 (1) (c) of the Patent Act, 1970.. He thus submitted that the Plaintiff was not aggrieved by the subsequent orders of revocation and had no reason to challenge them. He submitted that the record itself made clear that the subsequent orders of revocation were in fact never given effect to, and therefore the entire substratum of the Defendants' case for seeking a summary judgement and/or rejection of the Plaint in Suit No. 359 of 2017 was misconceived.

19. Mr. Singh also pointed out that, under Section 117D(2) of the Patents Act, 1970 (as it stood prior to amendment), any order of revocation passed by the IPAB was required to be communicated to the Controller. He therefore submitted that, had the subsequent orders of revocation been given effect to, the subject patents would have been removed from the Register as if they had never existed since 1998. He submitted that the very fact that the said Patents were renewed after the subsequent orders of revocation made implicit that the subsequent orders of revocation were never communicated

to the Controller and were not acted upon. He submitted that, in these circumstances, it was, therefore, unclear as to which patent, if any, was renewed from 2013 onwards and that this fact itself raised a disputed question of fact which could only be properly determined at trial.

20. Mr. Singh then took pains to point out that the subsequent orders of revocation were entirely premised upon the first order since they did not contain any independent reasons for revoking the said patents. He submitted that the first order was stayed by the Madras High Court on 19<sup>th</sup> November 2012, which stay was continued from time to time and was then finally set aside by this Court on 3<sup>rd</sup> September 2015. He therefore submitted when the first order was set aside, that the very basis of the subsequent orders of revocation stood effaced. Furthermore, he reiterated that the subsequent orders of revocation were never given effect after the first order was stayed. This was evident from the fact that the said patents were continuously renewed from 2013 onwards and were shown as being 'in force' on the e-Register.

21. Mr. Singh then placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Badrinath v. Government of Tamil Nadu and Ors.*<sup>7</sup> to submit that since the subsequent orders of revocation were *ex facie* passed only as a consequence of the first order and that once the first order was set aside, the subsequent orders of revocation would also, as a consequence, have to be set aside. He pointed out that the Hon'ble Supreme Court in this context specifically held as follows:

*“This flows from the general principle applicable to “consequential orders.” Once the basis of a proceeding is gone, maybe at a later point in time by order of a superior authority, any intermediate action taken in the meantime - like the recommendation of the State and by the UPSC and the action taken thereon - would fall to the ground. This principle of consequential orders which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders. In other words when an order is passed by an authority and its validity is being reconsidered by a superior authority (like the governor in this) and if before the superior authority has given its decision, some further action has been taken on the basis of the initial order of the primary authority, then such*

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<sup>7</sup> (2000) 8 SCC 395.

**further action will fall to the ground the moment the superior authority has set aside the primary order.**” (emphasis supplied)

22. Mr. Singh then pointed out that by virtue of the order dated 3<sup>rd</sup> September 2015 passed by this Court in Writ Petition (L) No. 2867 of 2014, by which the first order was set aside and the fact that the renewal fees were accepted and the said patents were shown as “*in force*”, it was clear that the subsequent orders of revocation were never acted upon and/or enforced. He therefore reiterated that no legal right of the Plaintiff was infringed / prejudicially affected by virtue of the subsequent orders of revocation. He thus submitted that the Plaintiff was not, in any manner, aggrieved by the subsequent orders of revocation. He then also pointed out that the customs authorities had acted on the basis of communications dated 30<sup>th</sup> December 2015 and 17<sup>th</sup> February 2016, addressed by the Deputy Controller of Patents and Designs, Mumbai Patent Office to Additional Commissioner of Customs, SIIB(I), Air Cargo Complex Sahar, Andheri (East), Mumbai-400099, by which the customs authorities were informed that both Patent No. 188787 and Patent No. 189027 were

subsisting and ‘in force’ as per the e-Register of Patents, and on the basis whereof the customs authorities had seized the consignment of infringing goods, as recorded in the order dated 14<sup>th</sup> March 2017 of this Court.

23. Mr. Singh then invited my attention to an order dated 25<sup>th</sup> June 2015, passed in Suit No. 633 of 2014 also filed by the Plaintiff, i.e., ***Bharat Bhogilal Patel v. Allflex India Pvt. Ltd.***, to point out that this Court had, in light of the Second Order, specifically framed the following issue in the said Suit, viz.

*“(ii) Whether the Defendant proves that the claim registered patents were revoked vide Order dated 14th March 2013?”*

He pointed out that the above issue, in fact, placed the burden on the Defendant to prove whether the order dated 14<sup>th</sup> March 2013 resulted in the revocation of the Plaintiff’s patents.

24. Mr. Singh also pointed out that Samsung India Electronics Pvt. Ltd, i.e., the Applicant in ORA/10/2011/PT/MUM and ORA/11/2011/PT/MUM, in which the second order was passed, had filed a Writ Petition second before the Delhi High Court on the basis of the second order seeking deletion of

the said patents from the Registrar under the provisions of Section 71(c) of the Patents Act. He submitted that the Patent's Office had filed an Affidavit dated 8<sup>th</sup> February, 2018, in the said Writ Petition stating that notwithstanding the existence of the subsequent orders of revocation, the said patents continued to remain in force in view of the various stay orders passed by both this Court and the Madras High Court. Mr. Singh pointed out that on the basis of the said Affidavit, the Delhi High Court had, vide an order dated 6<sup>th</sup> December 2019, permitted Samsung to withdraw the said Writ Petition without granting any reliefs and after specifically recording as follows:

*"Ld. counsel for the Petitioner wishes to withdraw the present petition, as the term of the patent has already expired. This withdrawal would however **not prejudice any suit** that may be pending for the period when the patent was valid."*

(emphasis supplied)

He submitted that this, therefore, clearly demonstrated that the Plaintiff's right to sue on the basis of the said Patents was expressly kept open despite the existence of the subsequent orders of revocation.

25. Mr. Singh then submitted that despite being aware of the existence of the subsequent orders of revocation, none of the Defendants had filed any proceedings under Section 71 (c) of the Patents Act, seeking deletion of the said Patents from the register of Patents. He submitted that this fact alone clearly demonstrated that the Defendants had also understood that the said patents had not been revoked pursuant to the subsequent orders of revocation.
26. Mr. Singh submitted that the stand taken by the Patent Authorities in the Affidavit dated 8<sup>th</sup> February 2018 filed in the Writ Petition filed by Samsung India Electronics Pvt. Ltd. before the Delhi High Court was also reiterated in the Affidavit dated 26<sup>th</sup> February 2026 filed in the present proceedings. He pointed out that in the Affidavit dated 26<sup>th</sup> February 2026, the Patent authorities had made certain allegations against the Plaintiff with

respect to purported misrepresentations, which also the Patent authorities would have to prove during trial.

27. Basis the above, he submitted that the subsequent orders of revocation did not have the effect of revoking the Plaintiff's patents, and hence the Plaintiff had not suffered any legal injury and was not "aggrieved". He thus submitted that the Plaintiff did not have to challenge the subsequent orders of revocation.
28. Mr. Singh then placed reliance upon the decision in the case of *Ambalal Sarabhi Enterprises Limited v. K.S. Infraspace LLP and Anr.*<sup>8</sup> and *Syrma Technology Pvt. Ltd. v. Powerwave Technologies Sweden*<sup>9</sup>, to submit that the provisions of Order XIII-A were introduced for expeditious disposal of Suits so as to streamline the judicial process and to ensure the smooth flow of the same with respect to commercial disputes. He submitted that the very intent of Order XIII-A had been defeated by the Defendants, rendering it toothless since, after filing the said Notices of Motion in or around 2019, the Defendants had not deemed it fit to have the same

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<sup>8</sup> (2020) 15 SCC 585.

<sup>9</sup> 2020 SCC Online Mad. 5737.

decided at the earliest. He submitted that the Defendants had, in fact, allowed the Applications to languish for over 7 years. This, he submitted, demonstrated that the intent of the Defendants in filing the captioned Notices of Motion was merely to delay the hearing of the captioned Suits and nothing else.

29. Mr. Singh submitted that the Plaintiff had more than a reasonable chance of succeeding in the captioned Suits under Order XIII-A Rule 3(a), and even otherwise, he submitted that the Defendants had failed to show that there were no compelling reasons to proceed to trial under the provisions of Order XIII-A Rule 3(b). He then, without prejudice and strictly in the alternative, submitted that in view of the facts and documents set out above, there can be no absolute certainty at this stage that the Plaintiff has no reasonable chance of success in the captioned Suits. He, therefore, submitted that the Notices of Motion be dismissed with costs.

**Submissions of the Plaintiff in Notice of Motion No. 820 of 2018:**

30. Mr. Singh, then submitted that the contention of the Defendants that the Plaintiff in Suit No. 359 of 2017 was liable to be rejected under Order VII

Rule 11 of the Code of Civil Procedure, 1908 was wholly misconceived. He submitted that it is now well settled that while considering an application under Order VII Rule 11, the Court is required to confine itself to the averments contained in the Plaint and, on that basis alone, determine whether the Plaint discloses a cause of action. Mr. Singh submitted that, in the present case, nothing whatsoever had been pointed out by the Defendants to demonstrate that the Plaint, as framed and read as a whole, failed to disclose a cause of action. He submitted that the entire basis on which rejection of the Plaint was sought was the allegation that the Plaintiff had suppressed the subsequent orders of revocation and that, consequently, the Suit itself was not maintainable. He however, submitted that, for the reasons already recorded in paragraphs (18) to (27) above, the effect and legal consequences of the said orders, including the allegation of suppression, were matters that could not be conclusively determined without evidence being led by the parties.

31. Mr. Singh then also submitted that, as noted in paragraph (23) above, this Court had already framed a specific issue in Suit No. 633 of 2014 touching

upon these very aspects. He therefore submitted that the Defendants, in substance, sought to travel beyond the Pleint and invite the Court to adjudicate disputed questions of fact and law at the threshold stage itself, which plainly fell outside the limited ambit of Order VII Rule 11. He thus submitted that the decisions in *Dahiben v. Arvinbhai Kalyanji Bhanusali* and *T. Arivandandam v. T.V. Satyapal* would have no application to the facts of the present case since those decisions were rendered in circumstances where, on a meaningful reading of the pleint itself, the suits were found to be manifestly vexatious, barred by law, or wholly devoid of a cause of action. Mr. Singh submitted that in the present case, the entire attempt of the Defendants was to look beyond the Pleint based on those alleged facts seeking rejection of the Pleint. This he reiterated was impermissible and beyond the scope of an application under the provisions of Order VII Rule 11 of the CPC.

**Reasons and Conclusions:**

32. Having heard Learned Counsel for the Parties and having considered the rival contentions, the record before me and the case law upon which

reliance has been placed, I have no hesitation in holding that all the captioned Notices of Motion would have to be dismissed with costs. I say so for the following reasons, viz.,

- A. The entire basis on which the Defendants have sought a summary dismissal of the Suits under the provisions of Order XIII-A of the CPC is that the Orders dated 14<sup>th</sup> March, 2013 and 7<sup>th</sup> March, 2014 are independent and self-sustaining orders of revocation and are not premised solely on the First Order. To my mind, such a contention needs only to be stated to be rejected since a plain reading of the operative part of both these Orders clearly indicates the contrary. The second order records, "Therefore, in view of the order dated 12th June 2012 passed in ORA 5 & 6 of 2008 relating to the same patents, these ORAs are allowed." and similarly, the operative part of the third order records, "Therefore, as this Board has passed orders dated 12th June 2012 and 14th March 2013, revoking the subject patents, all these four ORAs are allowed." thus there can be no doubt that the subsequent orders of revocation were based entirely on the first order.

- B. While it is undoubtedly correct that the second order records “*the invention was known, that there is neither any novelty nor any inventive step*”, the second order is entirely bereft of any independent reasoning to support such finding. Also, and crucially, the IPAB has, in both the subsequent orders of revocation specifically granted the Plaintiff, the liberty to challenge the said orders, depending upon the outcome of the Writ Petitions by which the Plaintiff had impugned the First Order. Therefore, in my view, for the reasons set out in paragraph (A), it is clear that the second and third orders were premised entirely upon the First Order. Hence, I find that the Plaintiff’s reliance upon the decision of the Hon’ble Supreme Court in the case of ***Badrinath v. Government of Tamil Nadu*** to be entirely apposite, and the said discussion would squarely apply to the facts of the present case.
- C. I also find much merit in the Plaintiff’s contention that the subsequent orders of revocation were never given effect to. This is apparent from the fact that the said Patents have been renewed and shown as being ‘in force’ in the e-Register since the year 2013. Furthermore, if the

subsequent orders, or either of them, had been enforced, the IPAB would have, as per the provisions of Section 117D(2) of the Patents Act, communicated the subsequent orders of revocation to the Controller of the Patents. Clearly this has not been done since, as already noted above, the renewal fees have been accepted, and the said Patents show as being in force. The record also bears out that the validity of the said patents has been extended without any qualification as under the provisions of Section 67(1)(c) of the Patents Act. This would not have been so had the subsequent orders been given effect to.

D. Also and Crucially, the Controller of Patents has, in the Affidavit dated 8<sup>th</sup> February, 2018, filed before the Delhi High Court in Writ Petition (C) No. 1092 of 2017 filed by Samsung India, expressly stated that the said Patents continued to remain in force in view of the various stay orders passed by the Madras High Court and this Court from time to time, which had the effect of suspending the operation of the subsequent orders of revocation. The Controller has also, in the

Affidavit filed in these proceedings, *inter alia* stated, "*In view of the aforementioned orders passed by the Hon'ble Courts from time to time, the answering Respondents have maintained the legal status of the patent of Respondent No. 5 as "in force"*. In these facts, it is not possible, at this interlocutory stage, to accept that the Defendants would be entitled to a summary dismissal of the Suit on the basis of the subsequent orders of revocation. Furthermore, this Court has already, in Suit No. 633 of 2014 filed by the Plaintiff, framed this very issue<sup>10</sup> for determination. I see no reason why the same should not also be framed in the captioned Suits.

- E. In my view, there also is much merit in the Plaintiffs' contention that, even according to the Defendants' own understanding and assessment, the subsequent orders of revocation did not have the legal effect of revoking the said Patents. The Defendants, despite being aware of the existence of the subsequent orders of revocation, did not take steps under Section 71(c) of the Patents Act to seek deletion of the said

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<sup>10</sup> (ii) Whether the Defendant proves that the claim registered patents were revoked vide Order dated 14th March 2013?

Patents from the register of Patents. Clearly, therefore, the captioned Notices of Motion have only been filed as “a shot in the dark”. This is certainly not the object and purpose of Order XIII-A of the CPC. In fact, such conduct militates against the very object and purpose of Order XIII-A of the CPC and the Commercial Courts Act, 2015.

- F. A plain reading of Order XIII-A makes clear that there must be no real prospect of success and compelling reason for a trial. The test is therefore not one of probability, but the word “real” is intended to exclude prospects that are fanciful or entirely without foundation. For the reasons set out in (D) and (E) above, it cannot even remotely be suggested that, in the facts of the present case, the Plaintiff does not have any “*real prospect of succeeding on the claim*”. In my unhesitating view, several triable issues will arise, and thus, the question of a summary dismissal of the Suits at this stage does not arise.
- G. Also for the reasons set out in (D), (E) and (F) above, I find much merit in the Plaintiffs' reliance upon the decision in the case of

*Ambalal Sarabhi Enterprises Limited v. K.S. Interface LLP and Anr.*<sup>11</sup> and *Syrma Technology Pvt. Ltd. v. Powerwave Technologies Sweden*<sup>12</sup>, and the submission that the Defendants' conduct has been to defeat the very provisions of Order XIII-A. The provision of Order XIII-A was introduced for the expeditious disposal of Suits so as to streamline the judicial process and to ensure the smooth flow of the same with respect to commercial disputes. The Defendants have clearly misused the provisions of Order XIII-A to defeat the scheme of the Commercial Courts Act, 2015, as already noted.

H. Also, it cannot be lost sight of that this Court vide order dated 3<sup>rd</sup> September, 2015, had set aside the first order and remanded the matter back to the IPAB for consideration afresh. Thus, the IPAB was to determine the issue of revocation of the said patents. This inquiry is, admittedly, pending determination, and therefore for this Court to, at this stage in a summary manner, allow the captioned Notices of

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<sup>11</sup> (2020) 15 SCC 585.

<sup>12</sup> 2020 SCC Online Mad. 5737.

Motion would effectively mean that the order dated 3<sup>rd</sup> September, 2015, is defeated.

- I. Hence, for the reasons set out in paragraphs (F), (G), and (H) above, I am satisfied that a case for Order XIII-A has not been made by the Defendants and on the facts and evidence of the present case, the Plaintiff in fact has a real prospect of success on the central issue of whether the Patents were valid and subsisting. I must note that the Defendants have not provided me with any other compelling reasons as to why this case must not proceed to trial. On the contrary, to my mind, the following, amongst other issues, would possibly arise for determination in each of the Suits, viz.

- i. Whether the Second and Third Orders are consequential or independent to the First Order;*
- ii. Whether the setting aside of the First Order by this Court's consent order of 3<sup>rd</sup> September 2015 resulted in the Second and Third Orders being ineffective by operation of law;*

*iii. What legal effect, if any, the various stay orders and the conduct of*

*the Controller of Patents have upon the operative force of the*

*revocation;*

*iv. What is the effect of the continued renewal of the Patents post the*

*Second and Third Orders; and*

*v. Whether the Plaintiff suppressed material facts from the Plaintiff.*

J. Insofar as the contention that the Plaintiff in Suit No. 359 of 2017 is liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 is concerned, I find the same to be wholly devoid of merit. It is now well settled that while considering an application under Order VII Rule 11, the Court is required, on the basis of the averments in the Plaintiff and on that basis, determine whether a cause of action is disclosed. In the present case, the principal basis on which the Defendants seek rejection of the Plaintiff is the allegation that the Plaintiff suppressed the subsequent orders of revocation and that, in view thereof, the Suit itself was not maintainable. However, for the reasons already recorded in paragraphs (C) and (D) above, the effect and legal consequence of the said orders,

including the allegation of suppression, are matters that cannot be conclusively determined without evidence being led by the parties. As noted in paragraph (H) above, this Court has already framed a specific issue in Suit No. 633 of 2014 on this very aspect. Nothing has been pointed out as to how the Plaintiff when read as it is does not disclose a cause of action. The entire basis of seeking rejection of the Plaintiff in the facts of the present case is to, in fact look beyond the Plaintiff and not at the Plaintiff itself. This clearly and plainly falls outside the limited ambit of Order VII Rule 11. Hence, the Defendant's reliance upon the decisions in the case of *T. Arivandandam v. T.V. Satyapal & Anr and Dahiben v. Arvinbhai Kalyanji Bhanusali* do not apply to the facts of the present case.

K. Furthermore, as noted in (E) and (F), the Defendants have misused the provisions of Order XIII-A and all the captioned Suits being Commercial Suits, the provisions of the Commercial Courts Act, 2015, to which the amended regime pertaining to costs under Section 35 of the CPC squarely applies. Section 35, as amended by Section 16 of the

Commercial Courts Act, 2015, embodies the legislative principle that at any stage, costs should ordinarily follow the event and be awarded in favour of the successful party, unless the Court for reasons to be recorded directs otherwise. In the present case, in my view, and as already noted, the captioned Notices of Motion have been filed by the Defendants without any credible legal or factual foundation and appear to be calculated solely to obstruct and delay the expeditious adjudication of the captioned Commercial Suits. The Plaintiff has consequently been compelled to incur legal costs, and also considerable judicial time has been wasted. In these circumstances, and having regard to the object and scheme of the Commercial Courts Act, an order of costs must follow.

33. Hence, for the aforesaid reasons, I pass the following order:

- i. The captioned Notices of Motion Nos. 820 of 2018, 1604 of 2019, 1602 of 2019, and 1593 of 2019 are accordingly dismissed with costs of Rs. 1,00,000/- (Rupees One Lakh only) for the reasons recorded in (K) above.

- ii. Costs shall be paid to the Plaintiff within a period of 8 weeks from today. In the event the costs are not paid within a period of 8 weeks, interest at the rate of 8% shall apply.
- iii. The captioned Suits shall proceed to trial.

**[ARIF S. DOCTOR, J.]**

34. After passing the order, Mr. Kane pressed for a stay to the order of costs for a period of four weeks. None appeared for the Plaintiff to oppose the same. Hence, a stay is granted for a period of four weeks from today.

**[ARIF S. DOCTOR, J.]**