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REV.PET(IPD) No. 2 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-09-2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

**REV.PET(IPD) No. 2 of 2026
and (PT) A No. 7 of 2026**

M/s. Arunachalaa Enterprises
Rep. by its Partner, Mr. Jeyakodi,
207A, Allwin Nagar, 1st Cross Road,
Karur - 639 001, Tamil Nadu.

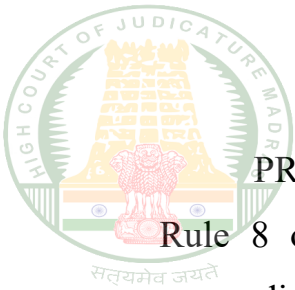
..Petitioner in both
petitions

Vs

1. M/s. R. Sukumar, Proprietor,
Trading as M/s.Sri Sustainable Recycling,
SF No. 241/1-18, 251/3, Kallikudi Village,
R.S. Mangalam Taluk,
Ramnathapuram - 623 535, Tamil Nadu.
2. M/s. The Office Of The Controller General Of
Patents,
Designs and Trademarks,
Also Known as Indian Patent Office,
Patent Office Intellectual Property Building,
Boudhik Sampada Bhavan,
GST Road, Guindy, Chennai - 600 032.

..Respondents in both
petitions

PRAYER in Rev.Pet(IPD)No.2 of 2026: Review petition filed under Order XIV Rule 8 of O.S.Rules read with Order XL VIII Rule 1& 2 read with Section 114 of CPC, to Review the order dated 22.07.2026 made in (PT) A.No. 5 of 2026 in O.P (PT) No. 4 of 2026 passed by this Court.



PRAYER in (PT) A.No.7 of 2026: Application filed under Order XIV Rule 8 of O.S. Rules read with Section 151 of CPC, to stay all further proceedings of the order dated 22.07.2026 made in (PT) A. No. 5 of 2026 in O.P (PT) No. 4 of 2026 pending disposal of main petition Passed by this Court.

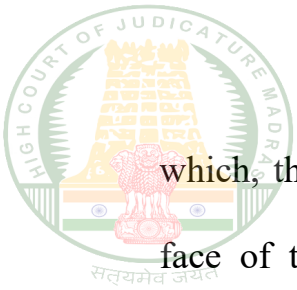
For Petitioner : Mr. V. Natarajan
[in both petitions] Assisted by Mr.G.V. Subramanian

For Respondents : Mr.A.K.Rajaraman
[in both petitions] for Mr.Kamalesh Kannan, [R1]
Mr.J.Madanagopal Rao [R2]

COMMON ORDER

This Review Petition is filed to review the order dated 22.07.2026 passed in (PT) A.No. 5 of 2026 in O.P. (PT) No. 4 of 2026, and to stay all further proceedings therein.

2. The learned counsel appearing for the review petitioner would submit that the suit was instituted prior to filing of revocation petition and in the said suit, the revocation petitioner had not filed any counter claim seeking revocation of the patent. He would submit that once a suit had been filed, the only remedy available therein, is to file a counter claim seeking revocation of the patent and in that regard, the respondent had not filed any counter claim. He would further submit that in this scenario, the exercise of power under Section 104 of the Patents Act, 1970 [hereinafter referred to as 'the Act'] to transfer a suit, in



which, the counter claim is not filed is a material irregularity apparent on the face of the record. He would further submit that when the jurisdiction has already been vested with the District Court for dealing with the suit for infringement and when the counter claim has not been made in the said suit, the District Court is not ousted of its jurisdiction to deal with the suit. He would further submit that once a suit has been filed, there is no independent remedy available for the respondent herein to invoke the power of this Court for revoking the patent and in that regard, he would submit that the transfer made by this Court would have to be revisited. He had also relied upon the judgment of the Hon'ble High Court of Gujarat and Allahabad in the case of ***Rajeev Indravadan Modi Vs. Instance, Laboratories Private Limited [LAWS (GJH)-2001-1-22]*** and ***Fabcon Vs.Industrial Engineering Corpn.[LAWS(ALL)-1986-2-11]*** and would submit that when a counter claim is filed in the suit *de hors* the revocation petition, the said suit could not be transferred by this Court from the District Court as it would oust the jurisdiction of the District Court available under the Patents Act. Placing heavy reliance upon the judgment of the Allahabad High court, learned counsel would submit that when there is no express pleading in the suit with regard to revocation of patent, on which the suit for infringement had been filed, then such suit could not be transferred as done by this Court in the present case. Hence, he prays this Court to revisit the order and recall the order of transfer. That apart, the learned counsel also claimed that the Court's view on maintainability of the Original Petition was not



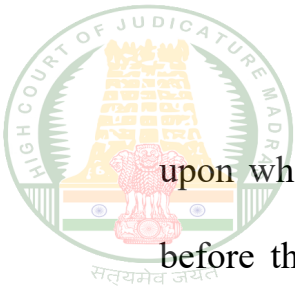
necessary as the same was not raised by him.

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3. Countering his arguments, the learned counsel appearing for the respondent would submit that there are no material error apparent on the face of the record for this Court to review the order and submit that this Court had categorically held, that too after analysing the provision of Section 64 of the Act and the judgment of the Hon'ble Apex Court that this Court had jurisdiction to transfer the suit for infringement that had been filed before the District Court to be tried along with the revocation petition filed before this Court. Hence, he would submit that there is no necessity for this Court to review the order.

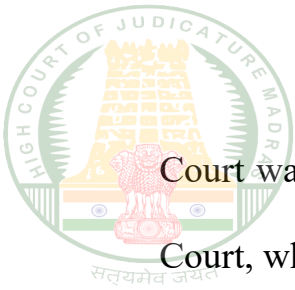
4. I have considered the said submissions made by the learned counsel appearing on either side.

5. The review petition had been filed on the primary ground that the procedure available for revocation, when a suit for infringement had been filed is only by way of filing a counter claim and not by filing an independent revocation application under the Patent Act. Section 64 entitles filing of a revocation petition independently or as a counter claim in a suit of infringement of the patent on the various grounds envisaged thereunder. In the judgment that had been referred to by this Court, it should be noted that in a suit for infringement, a counter claim had been filed seeking revocation of the patent



upon which the infringement suit has been instituted. The said suit was filed before the Delhi High Court, thereafter applications have been taken out for revocation by the defendant thereunder. In that context, the Hon'ble Apex Court had held that once a counter claim had been filed for revocation, then, it was not upon the defendant to file an application for revocation of patent. Section 104 proviso envisages that in a suit filed for infringement of patent, if a counter claim is made for revocation of the patent, then the said suit would have to be transferred to the jurisdictional High Court. The said proviso had been appended only for the simple reason that only the High Court have a jurisdiction to deal with the revocation of a patent and not any other Court subordinate to it. This would mean that the District Court is not conferred a jurisdiction to deal with the issues relating to revocation of patent. The judgment that has been referred to, would clearly indicate that originally the suit for infringement had been filed before the High Court, in which, a counter claim had been made and therefore, there is no question of proviso to Section 104 being applied therein. In that context, the judgment of the Hon'ble Apex Court had clearly held that the revocation petition before an Appellate Tribunal after the filing of a counter claim is wholly not maintainable.

6. In the judgment of the Gujarat High Court, a factual finding had been recorded that there has been no written statements filed evidencing plea of revocation of patent as a counter claim. It is to be noted that the Gujarat High



Court was exercising the power of revision for transfer of the suits to the High Court, which had been rightly rejected by the Gujarat High Court.

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7. Similarly, the Allahabad High Court had also held that the proviso could not be invoked in the revision for transfer as there was no pleading with regard to the revocation of the patent. In the present case, the transfer application had been filed in a petition for revocation of a patent, based upon which, a suit had been filed and pending before the District Court. Pending the suit, the present Original Petition had been filed for revocation of the patent. A conceptional reading of the provisions of the Patent Act would indicate that a suit for infringement could be filed before the District Court. However, if in such a suit, a claim for revocation had been made, the District Court is ousted of its jurisdiction and the suit is to be mandatorily transferred to the jurisdictional High Court.

8. As held above, the right of a defendant in a suit for revocation of patent had been given under Section 64 of the Act either to file an independent revocation petition or to file it by way of a counter claim in a suit filed for infringement of the said patent. This statutory right cannot be whittled down by forcing the litigant to choose a remedy by only filing a counter claim. Such statutory rights available to the litigant cannot be curtailed to the litigant in choosing the mode of revocation. It is further to be noted that when a plea for



revocation had been made before an appropriate forum viz., the District Court dealing with the suit would have to either wait for the result of the revocation petition before this Court, which only has jurisdiction to decide the claim of revocation and in that regard, this Court is of the view that the object enshrined under the provision of Order VIII CPC, not to drive the litigant to different forum also gets fulfilled in transferring the suit to this Court to be dealt with along with the revocation petition. The power is not only available the proviso to Section 104 but also under clause Section 13 of the Letters Patent Act, which applies to this Court.

9.It is unfortunate that an attempt was made by the learned counsel for the petitioner that he had not raised the issue of maintainability for this Court to have answered the same. This Court does not answer the issues without it being raised before it. This issue was argued and pressed by the learned counsel and this Court has to refresh the memory of the counsel, from the written submissions fortunately filed by the petitioner in this case. Filing of the written submission primordially an issue of maintainability has saved this Court's grace and in that regard, this Court is of the view that the same need not be answered and leave it to the conscience of the learned counsel for the petitioner.

10. For the aforesaid reasons, this Court do not find any material error apparent on the record requiring a review of the order and accordingly, the



review petition stands dismissed and consequently, the application to stay all further proceedings made in (PT) A.No.5 of 2026 stands closed. No costs.

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Index: Yes/No

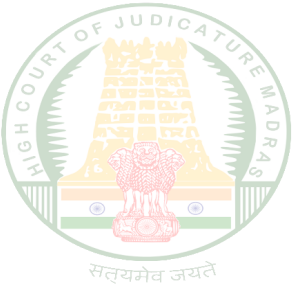
Speaking/Non-speaking order

Neutral Citation: Yes/No

MP

To

1. M/s. The Office Of The Controller General Of Patents,
Designs and Trademarks,
Also Known as Indian Patent Office,
Patent Office Intellectual Property Building,
Boudhik Sampada Bhavan,
GST Road, Guindy, Chennai - 600 032.



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K.KUMARESH BABU J.

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