2026:AHC:229143-DB

**RESERVED ON 05.10.2026**
**DELIVERED ON 04.11.2026**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**COMMERCIAL APPEAL No. - 11 of 2026**

Five Fingers Exports India Private Limited

…..Appellant(s)

Versus

Lohia Corp Ltd and another

…..Respondent(s)

| | | |
|---|---|---|
| Counsel for Appellant(s) | : | Vindhya S. Mani, Akanksha Pandey, Atul Gupta |
| Counsel for Respondent(s) | : | Navin Sinha (Senior Advocate), Devansh Misra, Ayush Sharma |

**Chief Justice's Court**

**HON'BLE ARUN BHANSALI, CHIEF JUSTICE**
**HON'BLE KSHITIJ SHAILENDRA, J.**

**(Per: Kshitij Shailendra, J)**

1. Heard Ms. Vindhya S. Mani, learned counsel for the defendant-appellant and Shri Navin Sinha, learned Senior Counsel assisted by Shri Devansh Misra and Shri Ayush Sharma, learned counsel for plaintiff-respondent No. 1. Respondent no. 2 being defendant no. 2 in the suit, has been arrayed as proforma party and has no significant role in the *lis*.

THE APPEAL

2. The present Appeal has been filed by defendant under Section 13 of the Commercial Courts Act, 2015 read with Section 104 and Order XLIII Rule 1(r) CPC against the order dated 22.05.2026 passed by the

Commercial Court, Varanasi in Original Suit No. 02 of 2026, whereby the application filed by the respondent No. 1 ('the respondent') under Order XXXIX Rules 1 and 2 CPC has been allowed and the appellant has been restrained by way of an interim injunction, from manufacturing, selling, using, or offering for sale Valve Bag Conversion Machines or similar machines infringing Patent No. 431032 titled as **"A Device and a Method for Controlling the Motion of a Spreader Bar"**.

**Scope of this appeal:**

3. Since this appeal has arisen from an order granting temporary injunction, the discussion made in the present judgment would be confined to and understood only *qua* three basic ingredients governing the matters of grant of temporary injunction; i.e. *prima facie* case, balance of convenience and irreparable loss. Though learned counsel for both sides extensively argued their case on merits on various dates, any observation made in this judgment based upon arguments would remain confined to the aforesaid three ingredients/parameters only and may not be treated as a conclusive opinion on any issue involved in the *lis*.

**FACTS OF THE CASE**

4. The plaintiff-respondent instituted the suit in question under Sections 108 and 109 of the Patents Act, 1970 read with Section 37 of the Specific Relief Act, 1963 claiming following reliefs:

> (a) A decree of Permanent Prohibitory Injunction restraining the defendant No. 1 themselves or trading as other entity, their partners, related parties, servants, employees, officers, agents, dealers, stockists, distributors, customers and all other acting for and on their behalf from manufacturing. marketing, selling, offering for sale, using the machines/ parts, importing and in any other manner, directly or indirectly, commercializing or dealing in any product or using any process including valve bag conversion machines that infringes the subject matter of Indian Patent No. 431032 or any of them, or any other patents as the plaintiff may add in the proceedings,
>
> (b) A decree of Permanent Prohibitory Injunction restraining the defendant No. 2 themselves or trading as other entity, their partners, related parties, servants, employees, officers, agents, dealers, stockists, distributors, customers and all other acting for and on their behalf from using the machines/ parts

that infringes the subject matter of Indian Patent No. 431032 or any of them, or any other patents as the plaintiff may add in the proceedings;

(c) A decree by way of mandatory injunction/an order of delivery up of all stocks of the infringing goods in possession of the defendant No. 1 and their distributors, which infringe the subject matter of the Suit Patent namely Indian patent No. 431032or any other Patents as the plaintiff may add in the present proceedings, to the representatives of the plaintiff for the purposes of destruction;

(d) A decree by way of mandatory Injunction/an order directing defendant No. 1 to disclose, by way of affidavit full particulars of all its sales and inventory, including details of all products manufactured and/or sold by defendant No. 1 that infringe the subject matter of Indian Patent No. 431032, together with the quantum of sales made, and the net selling price of the infringing products, and further, an order for seizure of all infringing products (whether sold or held in inventory/stock) in the possession, custody, or control of defendant No. 1, and

(e) A decree for damages for Rs. 10 lacs together with, both compensatory and punitive, as may be ascertained in the present suit to be paid by the defendant No.1 on account of infringement of the Indian patent No. 431082 or any other patents as the plaintiff may add in the present proceedings, and their *mala fide* conduct, payable to the plaintiff; or

(f) A decree/An order for rendition of accounts of profits illegally earned by the defendants on account of use of the plaintiff's invention covered by Indian Patent no. 431032, or any of them, or any other patents as the plaintiff may add in the present proceedings, and a decree for the amount so found in favour of the plaintiff.

**Plaintiff's case**

5. The case of the plaintiff is that it is a globally recognized company and one of the best known names in machines for woven plastics over four decades and it delivers end-to-end machinery solutions for the plastic woven fabric industry worldwide through its various offices situated in India and abroad. The plaintiff provides advanced solutions for the flexible woven plastic (PP/HDPE) industry for packaging of solid bulk materials into applications including agro commodities, building materials and various chemicals. Its manufacturing facilities are spread across 160,000 sq. mtrs in Kanpur & Bengaluru. It has commissioned an installation base of more than 2,300 extrusion lines, 96,000 circular looms and 4,68,000 winders globally. The overall plastic processing

capacity from the plaintiff's comprehensive solutions is more than 8.14 million metric tonnes per annum.

6. The range of machines being manufactured and sold by the plaintiff *inter-alia* includes valve bag conversion machines ("Valvomatic Machine") for the purpose of flexible packaging solution for a wide range of industrial, agricultural and consumer products including Cement, Fertilizers etc. The plaintiff has invested huge sum of money and resources in safeguarding its Intellectual Property Rights and has successfully secured several IPR registrations. The plaintiff disclosed its annual turnover (revenue from operations) for past five financial years as under:

| S No. | Financial Year | Amount Turnover (Rs. in Crore) |
|---|---|---|
| 1. | 2020-21 | 1164.62 |
| 2. | 2021-22 | 2004.98 |
| 3. | 2022-23 | 1811.28 |
| 4. | 2023-24 | 1093.73 |
| 5. | 2024-25 | 1310.10 |

7. The plaintiff claims to be the owner and exclusive right holder of the Suit Patent as per section 48 of the Patents Act, 1970. It enjoys exclusive rights to prevent third parties, such as the defendants, from infringing the said patent through unauthorized use of such patent in the manufacture, sale, offer for sale of such machinery and/or such devices or products made by use of such machinery having the inventive features covered under Suit Patent. The products are widely popular and sold in the market but the defendants are infringing claim of Suit Patent. As per information available with the plaintiff, the defendant was founded in 2011 almost 30 years after the plaintiff and that the defendant is engaged in machine manufacturing for woven bags, non-woven bags and fabric production and also straw making, flexo roll and bag printing machines. The defendant is also engaged in sale and offering for sale of the

impugned product "FFE VALVO", a Valvomatic Machine with inventive features of Suit Patent in India.

8. The plaintiff came to know in the month of October, 2025 that the defendant no. 2 had purchased a machine from the defendant No. 1 (appellant) having identical process with the features covered under Suit Patent. Thereafter, the plaintiff issued a notice dated 28.11.2025 to defendant No. 2 restraining it from using the Valvomatic Machine. In reply to the notice, the defendant No. 2 confirmed on 11.12.2025 that it had purchased the Valvomatic Machine in July 2025 from defendant No. 1 against full consideration and, since then, the same was being used in its manufacturing unit at Chandauli, UP. Further, while refusing to acknowledge the infringing activity, defendant No. 2 mentioned that the said machine could be seen by plaintiff's service engineers whenever they intended to visit defendant no. 2's factory.

9. Thereafter, a duly authorized team of the plaintiff visited the premises of defendant No. 2 on 15.12.2025 where the Valvomatic Machine procured from defendant No. 1 was found to have incorporated or replicated the patented technology owned by the plaintiff, thereby constituting an unauthorized use of the plaintiff's intellectual property. The continued use of the Valvomatic Machine by defendant No. 2, using the plaintiff's patented process, enables the defendants to wrongfully derive profits and financial benefits causing the plaintiff significant pecuniary and non-pecuniary losses, including loss of market share, revenue and goodwill.

10. Based upon the above statements contained in the plaint, the reliefs already indicated herein-before were claimed by the plaintiff. Alongwith the plaint, an application was filed under Order XXXIX Rules 1 and 2 read with Section 151 C.P.C. claiming temporary injunction on the line of preventive reliefs claimed in the suit and along with plaint/injunction application, the plaintiff filed documents: (i) Certified copy of resolution dated 01.08.2024, (ii) Certificate of Incorporation pursuant to change of name of the plaintiff Company dated

06.06.2024, (iii) Copy of order dated 16.04.2024 passed by the National Company Law Tribunal, Allahabad Bench, Allahabad, (iv) Descriptive images of their machine, i.e. Valvomatic 40 (Valve Bag Conversion Machine), (v) Photocopy of the award dated 19.09.2014 issued by the Federation of Indian Export Organisations, (vi) Certificate issued by Northern Region Export Excellence Award and other awards, (vii) Copy of Account Statements for the period 2020-21 to 2024-25, (viii) Copy of Patent Certificate dated 03.02.2015, (ix) Copy of Form-2 (Complete Specification of the Patent), (x) Copy of legal notice, its reply, (xi) Tax Invoice, (xii) Site Visit Report dated 15.12.2025 and (xiii) Some photographs etc.

**Counter affidavit/objections against injunction application**

11. The defendant-appellant filed objections against the injunction application, *inter alia,* stating that the defendant is a duly incorporated private limited company registered as an MSME and a Government-recognized Start-Up, incorporated on 06.07.2020, having its registered office at Coimbatore, Tamil Nadu. It manufactures woven bag making machines, non-woven bag machines, straw making machines and other industrial machinery through its own independently developed technology and engineering capability. It denied that its product, "FFE VALVO", infringes Patent No. 431032 of the plaintiff, either literally or under the Doctrine of Equivalents.

12. Further stand is that the plaintiff's claim charts are based on photographs unilaterally taken by the plaintiff's own team at defendant No. 2's premises on 15.12.2025 in the absence of defendant-appellant. The photographs, even if genuine, at best depict the machine as installed at defendant No. 2's factory not necessarily as designed and manufactured by defendant-appellant. No independent expert opinion, no patent expert's affidavit and no neutral technical analysis report has been filed by the plaintiff. The SPREADER BAR is the core, essential, and indispensable component of the entire claimed invention. Every claim of Patent No. 431032 is built upon the spreader bar as its

foundation. The defendant’s machine does not use a spreader bar but uses a FLARING PLATE and a FOLDING PLATE components. The plaintiff's spreader bar is a rod/bar-shaped component of a specific geometry designed to spread fabric outward, whereas the defendant's folding plate is a flat plate of an entirely different shape, geometry and working principle.

13. The plaintiff's patent achieves its fold by first spreading the fabric outward using the spreader bar to create a hexagonal shape formation, which is then creased to form the valve. The fundamental action is OUTWARD SPREADING via the spreader bar to form a hexagonal shape. The defendant’s machine operates on an entirely different and opposite principle. The folding plate pushes the fabric INWARD to create an inward corner triangular fold in accordance with BIS Standard IS 11652:2017 for cement bags. There is no spreader bar, no hexagonal shape formation and no outward spreading in the defendant's machine. The operating sequence of the two machines further confirms the fundamental distinction and whereas, in the plaintiffs machine, the spreader bar enters the bag mouth and spreads the fabric outward into a hexagonal shape before creasing, in the defendant's machine, the flaring motor drives the flaring plate into the bag mouth to support the fabric and then the folding motor drives the folding plate inward to create the triangular fold a completely different sequence, different mechanism and different result.

14. The plaintiff's infringement analysis that because both machines use servo motors, there is infringement is erroneous. The use of a servo motor *per se* is not what is claimed. What is claimed is a servo mechanism for controlling the motion of a SPREADER BAR. Since the defendant's machine does not have a spreader bar at all, a servo motor in the defendant's machine cannot as a matter of fact and law control the motion of a spreader bar. The defendant explained in detail, functioning of its machine and tried to establish differences in design, structure and operational functions of both the machines.

15. The defendant also pleaded balance of convenience in its favour stating that it is a small MSME and a recognized Start-Up and, therefore, any restraint order would be catastrophic bringing all manufacturing and business operations to an immediate halt, throwing employees out of work, destroying existing contracts and delivery obligations and causing irreversible economic and reputational harm to a nascent enterprise. The plaintiff, on the other hand, is a company with an annual turnover exceeding Rs. 1,000 crores, with manufacturing facilities of 1,60,000 sq metres across Kanpur and Bengaluru. The availability of defendant's machines to domestic manufacturers at competitive prices serves the public interest.

16. As regards irreparable injury, stand is that the alleged harm to goodwill, reputation and market share, put forth by the plaintiff, is speculative and unsupported by any credible evidence. The alleged loss to the plaintiff from the defendant continuing to operate is entirely hypothetical and grossly exaggerated and can, at worst, be compensated in damages if infringement is ultimately established and no financial data, market study or quantification has been provided by the plaintiff.

**Rejoinder reply**

17. The objections filed by the defendant were rebutted by the plaintiff by rejoinder objections (paper No. 60-C). Certain pleas raised in the injunction application were reiterated, various judgments as well as provisions of the Patents Act were referred to and reliance was placed on a Technical Inspection & Opinion Report of Dr. Pavan Kumar Thimmaraju, a scientific advisor on the Roll of Scientific Advisors maintained by Controller General of Patents, Designs and Trademarks (Indian Patent Office), Government of India, which report was annexed as Annexure No. RA-3 to the rejoinder affidavit.

18. It was, *inter alia*, stated in the rejoinder affidavit that the provision of spreader bar is not an essential inventive feature of the plaintiff's patent. It is regulation and control of its movement using a servo mechanism that forms the characterizing feature of the invention. The

pictorial representation of the spreader bar is not relevant as the same can also be a folding plate. The purpose of the folding plate of the defendant is also to make a triangular fold at the corner of the tubular fabric having separated individual layers. Therefore, the spreader bar of the patent and the folding plate of the defendant's machine are one and the same thing. Moreover, claims in the said patent are not limited to the specific shape of the spreader bar as they are already known in the prior art.

19. Like the defendant, the plaintiff also explained functional mechanism of the machines of the contesting parties, their components and comparison with a plea that the servo mechanism is not deployed as an ancillary or unrelated component, rather, it is integrated into the motion-control architecture of the machine for the specific purpose of controlling the displacement, timing, positioning and co-ordinated movement of the fabric-engaging element during the folding cycle and that mere change in nomenclature or substitution of one descriptive term for another, cannot defeat infringement where the impugned component performs substantially the same technical role within the overall mechanism.

20. As regards balance of convenience, the plaintiff’s response is that the defendant has willfully and deliberately incorporated the claimed functional mechanism of Patent No. 431032 into its "FFE VALVO" machine, commercially exploited controlling mechanism for commercial gain and, thus, protection of balance of convenience to a party that has brought its difficulties upon itself through its own infringing conduct, cannot be extended. The plea raised is that upon establishment of a *prima facie* case of infringement of a valid patent, irreparable injury is presumed in favour of the patentee and every instance of unauthorized practice of the patented invention constitutes an infringement of this exclusive right and the harm from such infringement and every infringing sale results in at least a corresponding loss of a sale by the plaintiff and erosion of its market share and goodwill and that irreparable

injury is inherent in the loss of exclusivity, displacement of patented products by infringing alternatives and the difficulty of quantifying the long-term erosion of the commercial value of the patented technology and such harm cannot be adequately compensated in damages at a later stage.

SUBMISSIONS ON BEHALF OF DEFENDANT-APPELLANT

21. Learned counsel for the defendant-appellant has made following submissions:

(a) The Commercial Court has failed to satisfy the settled triple test for grant of an interim injunction under Order XXXIX Rules 1 and 2 CPC. No *prima facie* case was established in favour of the respondent and the finding of infringement has been arrived at without first undertaking the foundational exercise of claim construction or conducting any meaningful element-by-element comparison between the claims of the impugned Patent and the appellant's product.

(b) The impugned order does not contain any independent or reasoned analysis demonstrating that the balance of convenience lies in favour of the respondent and it fails to comparatively assess the prejudice that would be caused to the appellant, whose business operations have been brought to a standstill. The Commercial Court has concentrated exclusively on the respondent's position and no comparative evaluation of hardship has been done and, therefore, the finding on balance of convenience is unsustainable.

(c) The respondent failed to demonstrate any irreparable injury, especially when any alleged loss is quantifiable and compensable in monetary terms. The Commercial Court has assumed irreparable injury without examining whether the alleged loss is capable of being compensated in damages. The finding proceeds on a presumption rather than an evidence based

analysis and, therefore, fails to satisfy the settled requirements governing interim injunctions.

(d) The Commercial Court has erroneously proceeded on the presumption that the impugned Patent must be treated as valid merely because it has not been challenged before the competent authority. Such an approach is contrary to settled patent jurisprudence, as the grant of a patent does not create any presumption of validity, particularly at the interlocutory stage.

(e) The impugned order proceeds on the respondent's interpretation of Claim No. 1 without undertaking any independent claim construction or comparative analysis. While Claim No. 1 merely refers to a "spreader bar", the Commercial Court has impermissibly expanded the claim through a purely functional interpretation and ignored the appellant's structural and shape-based distinctions.

(f) The Commercial Court has reduced the infringement analysis to the presence of a servo motor in both machines. Claim No. 1, however, claims a servo mechanism operating with a spreader bar and not a servo motor in isolation. The impugned order contains no analysis of the servo driver or the characterizing portion of Claim No. 1 and, therefore, proceeds on an incomplete claim construction and claim mapping exercise.

(g) The Commercial Court has relied upon selective portions of the specification to enlarge the scope of Claim No. 1. The settled principle under Section 10(4)(c) of the Patents Act is that the claims define the scope of the monopoly and the specifications cannot be used to vary or rewrite the claims. By substituting claim language with descriptive disclosures from the specifications, the impugned order has impermissibly broadened the scope of the patent.

(h) The respondent has alleged infringement only of Claim No. 1, which is a device claim, yet the Commercial Court has effectively undertaken a process-based comparison. Furthermore, the appellant's inward-folding mechanism using a folding plate is fundamentally different from the outward-spreading mechanism contemplated by the patented invention and such distinction has been ignored.

(i) The Commercial Court has accepted the expert report at its face value without independently examining the scope of Claim No. 1 or undertaking an element-by-element comparison with the Appellant's machine. The findings are based upon the conclusions of the respondent's expert only rather than an independent judicial determination of infringement.

(j) An expert's opinion is advisory and the Court must test it based upon material on record and form its own judgment. The expert report here was not filed with the plaint but first came with the Respondent No.1's rejoinder after the Appellant had replied, leaving no opportunity to answer it. The report states that the essence of the invention lies ‘not in the nomenclature or form of the spreading element’; that is, it reads the limitation ‘spreader bar’ out of the claim. The Court called it ‘sufficient’ in para 64 of the order, rejected the Appellant's request for a neutral report and adopted the conclusion in para 51 (‘according to the expert...’).

(k) The appellant's machine does not literally satisfy the asserted claim elements. In particular, the appellant's machine does not include a spreader bar; does not use driving rollers or a driving belt for positioning a spreader bar; and does not employ a belt-and-link assembly connected to a spreader bar. Accordingly, no case of literal infringement is made out on any of Claims 1, 5, 7, 12, or 13 of the impugned Patent.

(l) Appellant's admission was misread- The impugned order (para 54) says the appellant ‘admitted’ that its servo controls a ‘folding plate/bar, which is the flat bar in the patent specifications’. The Appellant said only that its servo mechanism controls a folding and flaring plate and that a spreader bar is wholly absent. The addition of the words ‘which is the flat bar in the patent’ is the Commercial Court's own opinion unsupported by material on record.

22. In support of her submissions, learned counsel for the appellant has placed reliance on the following judgments:

(i) **Guala Closures SPA vs. AGI Greenpac Limited** : 2024 SCC OnLine Del 3510, (para 40, 42, 66, 67)

(ii) **Jay Switches India Pvt. Ltd. vs. Sandhar Technologies Ltd. And others :** 2024 SCC OnLine Del 8434 (para 58 and 59)

(iii) **Automat Irrigation Pvt. Ltd. And others vs. Aquestia Limited and another :** 2026 SCC OnLine Del 1 (para 5, 8, 9)

(iv) **M/s Bishwanath Prasad Radhey Shyam vs. Hindustan Metal Industries** : (1979) 2 SCC 511 (para 43)

(v) **Crystal Crop Protection Limited vs. Safex Chemicals India Limited and others :** 2025 (103) PTC 315 (Del) (para 12, 13, 14)

(vi) **F. Hoffmann-LA Roche Ltd. & another vs. Cipla Limited :** 2008 SCC OnLine Del 382 (para 66, 86, 87)

(vii) **Astrazeneca AB and another vs. Intas Pharmaceuticals Limited :** 2020 SCC OnLine Del 2765 (para 124, 125, 130, 131)

(viii) **Shruti Manav Sharma & another vs. Sunaina Singh & others** : 2026 SCC OnLine 1549 (para 24, 28, 29, 32)

SUBMISSIONS ON BEHALF OF PLAINTIFF-RESPONDENT

23. Learned senior counsel appearing for the plaintiff-respondent has made submissions that a defendant must be able to set up a credible challenge and/or establish at least at the preliminary injunction stage, the vulnerability of the suit's patent and since, in the present case, patent granted in favour of the plaintiff has not been put to a credible challenge, injunction has rightly been granted. Emphasis in this regard has been laid on judgment of Delhi High Court in the case of **Astrazeneca AB** (supra) and also in the case of **FMC Corporation** (supra).

24. Relying upon judgment in **Bristol-Myers Squibb Company & others vs. Mr. J.D. Joshi and another:** 2015 SCC OnLine Del 10109 (paragraphs 81,82,83, 92, 93, 94), submission has been made that there exists a distinction between the credible nature of defence affecting the validity of the patent vis-a-vis a bald defence of non-infringement and in the case of old patent there is a presumption of validity in the form of its continuance and perpetuity unless controverted with the strong evidence to the contrary, which the appellant in the present case has failed to lead as no document whatsoever was filed by it.

25. Further submission has been made that once violation is established in case of a registered patent, subject to the patent being used, it will not be permissible to contend that the said patentee is not entitled to an injunction as monopoly of the patent is the reward of the inventor.

26. It has further been argued that the findings recorded on *prima facie* case, balance of convenience and irreparable loss are contained in different paragraphs of the order impugned and not at one place and referring to paragraph 62 of the order impugned, submission has been made that claim-to-product mapping being one of the significant aspects, the Commercial Court has recorded a clear finding that the said requirement was fulfilled by the plaintiff and, further, report of Scientific Advisor, namely, Dr. Pavan Kumar Thimmaraju was also given a thoughtful consideration and, therefore, the findings recorded by the

Commercial Court cannot be said to be perverse as the same are based upon material available on record at the time of consideration of application for temporary injunction.

27. Further submission is that, in paragraphs 82 and 83 of the counter affidavit filed in this appeal, reference of business of manufacture and sale of various machines has been made and pleadings contained in these paragraphs have been vaguely responded to by the appellant in its rejoinder affidavit, which aspect being of quite significance, the appellant has no case. Further, as per appellant's own website, the appellant is in business of manufacture and sale of other machines: namely, (a) Extrusion Tape Extrusion (FFE-TEM- G series), Extrusion lamination (FFE90-LM1600, FFE95-FMS900S), (b) Weaving circular Loom (FFE-1300-6G, FFE-850-6G), (c) PP- Woven Bag making machine BCS machine (BCSM 850/40 Series), BCS machine with hemming (FFE-BCS H), BCS Liner insertion with hemming (FFE-750 Liner), valve bag making machine (FFE Valvo), sheet fed liner insertion machine (FFE-SF 750 Liner) and (d) Printing machine (FFE 800) and, hence, appellant's entire business operations are not affected on account of the impugned order. The appellant is free to sell other machines despite passing the impugned order.

28. In written submissions, the respondent has also given a tabulated comparison of claim no. 1, appellant’s admission before the Commercial Court with reference to page numbers and comments and it has been submitted that once clear admissions are on record which strengthen the case of the plaintiff-respondent, no interference is warranted in the order impugned.

29. Relying upon **Wander Ltd. v. Antox India (P) Ltd: 1990 Supp SCC 727,** submission has been made that appellate courts ought to be circumspect in interfering with the discretionary orders of lower courts in injunction matters and interference is warranted only where the discretion has been exercised arbitrarily, capriciously, perversely or in disregard of settled legal principles. Relying upon **Anand Prasad**

**Agarwalla v. Tarkeshwar Prasad and others: (2001) 5 SCC 568**, submission has been made that while considering an application for a temporary injunction, the court must avoid conducting a mini-trial or delving into the merits of the case in detail. The exercise at that stage is limited to determining whether a *prima facie* case exists, along with considerations of balance of convenience and potential irreparable injury and the focus is not to adjudicate the ultimate rights of the parties.

30. It is further submitted that the appellant has challenged the validity of the Patent for the first time at the appellate stage and no challenge to patentability of the invention was raised before the Commercial Court in reply to the injunction application or in its submissions. The appellant cannot be permitted to setup a fresh case raising the ground of invalidity of patent for the first time in appeal before this Court and that too, arising out of an interlocutory injunction order.

31. It is further submitted that in the objections filed before the Commercial Court, there is an admission of the appellant regarding validity of the plaintiff's patent by the defendants, as recorded in para 37 of the impugned order, wherein the Commercial Court has categorically recorded a finding that the defendants have not assailed the validity of the patent of the plaintiff and that it is an admitted fact between the parties that the patent of the Plaintiff is valid. Further, this finding of the Commercial Court has not been challenged by the appellant in the instant appeal. In this regard, extract of para 37 was read which indicates- 37. कागज नंबर 22ग का उल्लेख किया गया जो कि पेटेंट संख्या 431032 का पेटेंट प्रमाणपत्र है, जिसे केन्द्रीय सरकार के पेटेंट कार्यालय द्वारा वादी के पक्ष में जारी किया गया। यह स्वीकृत तथ्य है कि इस पेटेंट की वैद्यता को प्रतिवादी संख्या 1 सहित किसी ने कभी चुनौती नहीं दी।..... In such circumstances, in light of Section 58 of the Indian Evidence Act, 1872 (now Section 53 of the Bharatiya Sakshya Adhiniyam, 2023), the principle that a fact admitted need not be proved aids the plaintiff in establishing a *prima facie* case of infringement and in substantiating the validity of its own patent.

32. Further submission is that the claim is for a device for controlling motion of spreader bar which makes triangular fold at one end of the tubular fabric and the motion is controlled by servo mechanism which has at least one servo motor and servo driver. The claim is for the above combination in Claim 1 and not for the individual elements.

33. Further submission is that the appellant did not challenge the expert's technical report on merits, on scope or on its claim mapping before the Commercial Court. It placed no technical material, expert opinion or counter-mapping to counter the report and no documents were filed as noted in para 20 of the order impugned. Its only plea was that an independent expert had not been appointed which plea, in absence of any contrary material, cannot be accepted.

34. It is contended that para 50 of the impugned order expressly refers to the Patent Office notification and the roll of scientific advisers. The Commercial Court, thus, satisfied itself of the expert's statutory credentials before relying on the report. Para 62 of the impugned order refers to the detailed claim mapping prepared by the expert at Page 13 of the report. The claim mapping compares each element of the suit claims with the impugned product element-by-element. Para 64 of the impugned order records the Court's findings on the basis of that mapping. The impugned order is, therefore, not a mechanical adoption of the report.

35. In support of his submissions, learned counsel for the respondent has placed reliance on the following judgments:

(i) **Zydus Lifesciences Limited vs. E.R. Squibb and sons, LLC and others :** 2026 SCC OnLine Del 483 (para 26.5.6)

(ii) **M/s Bishwanath Prasad Radhey Shyam vs. Hindustan Metal Industries** : (1979) 2 SCC 511 (para 21 and 32)

(iii) **FMC Corporation and others vs. Natco Pharma Limited :** 2022 SCC Online Del 4249 (para 31, 32, 34)

(iv) **FMC Corporation and others vs. Natco Pharma Limited :** 2025 SCC OnLine Del 8583 (para 18 and sub-para quoted therein)

(v) **Bristol-Myers Squibb Company & others vs. Mr. J.D. Joshi and another :** 2015 SCC OnLine Del 10109 (para 81, 82, 83, 92, 93, 94)

(vi) **Merck Sharp and Dohme Corporation and another vs. Glenmark Pharmaceuticals :** 2015 SCC OnLine Del 8227 (para 84, 85, 87, 88)

(vii) **Sotefin SA vs. Indraprastha Cancer Society and Research Centre and others :** (2022) 4 High Court Cases (Del) 452 (para 32, 73, 74)

(viii) **Neway Industries Pvt. Ltd. vs. Mold-Tek Packaging Limited :** 2026 SCC OnLine Del 892 (para 18)

(ix) **Divyangnakumari Harisinh Parmar (Dead) and others v. Union of India and others** : 2025 SCC OnLine SC 2064

(x) **Rama Kt. Barman (Died) Thr. Lrs. v. Md. Mahim Ali & Ors :** 2024 SCC Online SC 4083

(xi) **Union of India v. Ibrahim Uddin :** (2012) 8 SCC 148

(xii) **Municipal Corporation of Greater Bombay v. Lala Pancham :** AIR 1965 SC 1008

(xiii) **Arjan Singh v. Kartar Singh** : 1951 SCC 178

(xiv) **Bhupendra Singh v. Smt. Namrata Saraswat** : 2026:AHC:90283

(xv) **Pammi Devi v. Dinesh Kumar** : 2019 SCC OnLine All 7709

(xvi) **Chandra Deo Tyagi v. Additional District Judge Court No. 1 Meerut and others** : 2020 SCC OnLine All 849

APPELLANT'S SUBMISSIONS IN REJOINDER

36. Learned counsel for the appellant has, in rejoinder submissions, explained the functional attributes/characteristics of different components of the machines of both sides, such as spreader bar, triangular fold, servo mechanism, hexagonal fold, inward-outward movement etc. etc. Submission has been made that the two machines and their components, characteristics and functional attributes are totally different and plaintiff's case does not at all fall within the contours of a case for infringement of patents right. Further submission is that had the claim been carefully examined by the Commercial Court with reference to features and functioning of both machines and its various components etc., injunction application was bound to be rejected as even *prima facie* case did not exist in favour of the plaintiff.

37. As regards balance of convenience and irreparable loss, submission is that apart from the fact that findings are totally laconic, the respondent has, during the course of their submissions, attempted to cast burden on the defendant to establish that balance of convenience and irreparable loss did lay in its favour; whereas requirement of law is that in order to establish a claim for temporary injunction, it is for the plaintiff to prove existence of all the three ingredients in his favour.

38. Learned counsel has made vehement submissions that the respondent did not approach the Commercial Court with clean hands, rather its entire case is based upon material and gross concealment of most significant aspect, i.e., pre-existence of another patent "APPARATUS FOR INWARD FOLDING OF A CORNER OF A TUBULAR FABRIC", which was applied by the plaintiff on 16.04.2012 and was granted in its favour on 03.07.2020. Submission, therefore, is that same nature patent already existing in favour of plaintiff-respondent much before institution of suit itself, it was not disclosed in the plaint or injunction application and the plaintiff succeeded to obtain injunction order, which is liable to be vacated on this ground alone.

39. Learned counsel produced before the Court few documents pertaining to aforesaid another patent and read out various component/features thereof, which are said to be identical to the patent forming subject matter of present suit and the appeal. Learned counsel, however, fairly submitted that the said documents were not available to the appellant either at the time of contesting the injunction application or filing of appeal itself and the appellant very recently came to know about the same when it downloaded its copy from the concerned website in September, 2026 itself.

40. It is submitted that on the basis of concealment alone, the respondent was not entitled to any relief and is enjoying the injunction order since May 2026. Reliance in this regard has been placed on **Freebit AS vs. Exotic Mile Private Limited :** (2024) 97 PTC 585; **Freebit AS vs. Exotic Mile Private Limited** : (2024) 4 High Court Cases (Del) 1 (DB); **Seema Arshad Zaheer and others vs. Municipal Corporation of Greater Mumbai and others** : (2006) 5 SCC 282 and **Nugenesys Pharmaceuticals Pvt. Ltd. And another vs. Celagenex Research (India) Pvt. Ltd.** : 2026 SCC OnLine Del 6539.

41. Learned counsel has made further submissions that the expert report relied upon by the Commercial Court cannot at all be looked into for multiple reasons; firstly, the same did not form part of the injunction application; secondly, it was filed alongwith rejoinder affidavit only on 07.05.2026, whereafter only a single hearing was done by the Commercial Court on 13.05.2026 without granting any opportunity to the appellant to rebut the expert report; thirdly, the order was passed immediately thereafter on 22.05.2026; and fourthly, the alleged expert did not at all fall in the category of ‘Scientific Adviser’ as contemplated under Section 115 of the Patents Act, 1970. Submission is that under the scheme of the Act itself, such Scientific Adviser can be appointed only by the Court irrespective of moving or not moving an application by any party for that purpose and such appointment is only to assist the Court or to inquire and report upon any such question of fact or of opinion (not

involving a question of interpretation of law) as it may formulate for the purpose.

42. Referring to the expert report forming part of rejoinder affidavit filed before the Commercial Court, submission has been made that at so many places in the report, Dr. Pavan Kumar Thimmaraju, recorded his conclusion based upon interpretation of law (which is not permissible) indicating that the machine of the appellant performs substantially the same function in substantially the same way to achieve the same result as corresponding element in the patent. She further submits that tabulated depiction in the expert report otherwise contains multiple features indicating that the functional attributes of machines of the contesting parties are distinctive and, therefore, the finding of the Commercial Court based upon the erroneous conclusion drawn by the expert at the end of the report is totally misplaced.

43. Further submission has been made that the evidentiary value of the opinion of an expert has to be independently analyzed by the Court and conclusions must be derived by the Court after carefully going through the records and not merely based on what the expert has opined or concluded. On the question of admissibility of expert report and conclusion drawn on its basis, learned counsel has placed reliance on (i) **Ramesh Chandra Agrawal vs. Regency Hospital Limited and others** : (2009) 9 SCC 709, (ii) N**ew India Assurance Company Limited vs. Protection Manufacturers Pvivate Limited.** : (2010) 7 SCC 386, (iii) **Maharaja Agrasen Hospital and others vs. Master Rishabh Sharma and others** : (2020) 6 SCC 501 and (iv) **Sulphur Mills Limited vs. Dharmaj Crop Guard Limited and another** : 2024 SCC OnLine Del 2192.

ARGUMENTS OF RESPONDENT IN SUR-REJOINDER

44. Learned counsel for the respondent has vehemently opposed the submissions made by learned counsel for the appellant based upon the patent “APPARATUS FOR INWARD FOLDING OF A CORNER OF A TUBULAR FABRIC” and it is submitted that since the documents pertaining to this patent did not form part of the record of Commercial

Court or the appeal nor any application for leading additional evidence has been filed before this Court, the documents cannot at all be taken into consideration and the mandate of Order XLI Rule 27 CPC having not been followed, any such attempt on the part of the appellant is in teeth of the judgments in **Divyangnakumari Harisinh Parmar (Dead) and others v. Union of India and others** : 2025 SCC OnLine SC 2064, **Rama Kt. Barman (Died) Thr. Lrs. v. Md. Mahim Ali & Ors :** 2024 SCC Online SC 4083, **Union of India v. Ibrahim Uddin :** (2012) 8 SCC 148, **Municipal Corporation of Greater Bombay v. Lala Pancham :** AIR 1965 SC 1008, **Arjan Singh v. Kartar Singh** : 1951 SCC 178, **Bhupendra Singh v. Smt. Namrata Saraswat** : 2026:AHC:90283, **Pammi Devi v. Dinesh Kumar** : 2019 SCC OnLine All 7709 and **Chandra Deo Tyagi v. Additional District Judge Court No. 1 Meerut and others** : 2020 SCC OnLine All 849.

45. Learned Counsel further submitted that no documents were filed by the defendant as against the claim for temporary injunction, finding to which effect has been recorded by the Commercial Court in paragraph 20 of the order and, thus, the appellant cannot be permitted to improve its case here by producing one or more documents without taking recourse to law.

46. Further submission is that the patent laws are territorial in nature and the arguments advanced on behalf of the appellant based upon the judgment in the case of **Freebit AS** (supra) are totally misplaced, inasmuch as, in that matter, aspect of concealment was co-related with non-disclosure of some inventions in other countries and their effect in India, however, factual background of the present case is altogether different, as foreign inventions are only referable to Section 8 of the Act, whereas violation of the patent right in the present case has to be examined in relation to Indian territory only and, thus, the judgment cited has no application.

47. Taking aid of Section 10 (4) of the Act, submission has been made that the provision does not oblige a patentee to disclose other patents and

once statutory requirements as regards disclosure were fulfilled by the plaintiff-respondent, the plea based upon alleged non-disclosure of a patent which otherwise has no co-relation with the patent involved in the *lis*, is neither factually nor legally tenable. Various other submissions were made by learned counsel for the respondent by explaining the functional mechanism of the machine/components corresponding to the two patents, i.e. the one involved in the present *lis* and the other, concealment whereof has been alleged on behalf of the appellant.

48. Submission is that on an *ex facie* comparison of the Patent Application of 2012 with the patent application filed in support of the suit patent, it is abundantly clear that the Patent Application of 2012 relates to an apparatus used for widening the mouth of the valve to facilitate the filling-up of a bag and its claims show that it is nothing but an apparatus used for spreading the mouth of the valve in an automated manner for facilitating the filling-up of the valve. Submission is that the Patent Application of 2012 was already in the public domain for approximately three years prior to the filing of the application for the Suit Patent. The said document was available to the Patent Office during the examination of the Suit Patent and could have been considered as prior art. However, the same was not cited against the Suit Patent during examination.

49. Submission is that, in any case, the appellant cannot, at the stage of appellate arguments, selectively characterize a publicly available patent application as disclosing the same invention without establishing how the Patent Application of 2012 anticipates or otherwise affects the patentability of the specific claims of the Suit Patent.

## DISCUSSION

50. During the course of submissions, the ultimate original products (bags) manufactured by contesting parties were also displayed before the Court and learned counsel for both sides explained as to in what manner their machines function and operate so as to generate the product. Further, various images of different components of the machines,

compiled in various charts, demonstrating comparison between two machines and their components were also placed by learned counsel and though attempt was made on behalf of the appellant to establish that functional attributes as well as design and make of the internal components of both the machines are different, contrary submissions were advanced on behalf of the respondent so as to convince the Court that plaintiff's patent is being infringed by the defendant.

51. Learned counsel for both sides based their submissions on various provisions of the Patents Act, 1970, such as, definitions contained in Section 2, requirements of Section 10 and 13, term of patent as per Section 53, revocation of patents under Section 64, defences etc., in suit for infringement as per Section 107 and many other provisions; however, the Court need not reproduce these provisions and, first of all, it proceeds to consider the factual aspects of the matter as raised by both sides.

52. As per the Patent Certificate dated 03.02.2015, Government of India had granted to the plaintiff patent for an invention **'A Device And A method For Controlling The Motion of A Spreader Bar'.** Rival contentions were advanced by the parties in support of their respective pleas *qua* claim put by the plaintiff and whereas the plaintiff came up with a case that its patent is being infringed by the defendants so as to cause loss of business and goodwill etc. to the plaintiff, the defendant denied such infringement by explaining distinctive features of machines of the rival parties.

53. After hearing the parties at length, we find that various aspects are involved in this matter in relation to infringement of patent. We are conscious of the scope of this appeal which arises out of an order granting temporary injunction and, therefore, in view of settled position of law that a mini trial is not permissible at the stage of considering grant/refusal to grant temporary injunction or in an appeal arising out of the said order, we proceed to examine the order passed by the Commercial Court as to whether it delved into a critical analysis of three

ingredients, i.e., *prima facie* case, balance of convenience and irreparable injury.

54. From the material available on record and the submissions made at the bar, we find that the issues involved *inter se* parties are as regards design, shape, functional attributes of different components of the machines being manufactured by the parties and conflict is as regards existence of a spreader bar, flaring plate, folding plate, inward/outward movement of component(s), servo motors, servo mechanism for controlling the motion of a spreader bar, creation/making of a triangular fold at the corner of the tubular fabric, co-ordinated movement of the fabric engaging element, shape based distinctions, distinctive disclosures in the claim language, process based comparison, element-by-element comparison, driving rollers, driving belt, belt and link assembly etc. etc.

55. Further, as to whether, at this stage of suit proceedings, the material on record was sufficient to grant or refuse temporary injunction and as to whether the opinion of scientific advisor whose report was substantially relied upon by the Commercial Court, could be treated as conclusive even at the stage of grant/refusal to grant temporary injunction in light/ignorance of other material is another vital aspect which cannot be ignored by this appellate Court.

**Findings recorded and observations made by the Commercial Court in the order impugned:**

56. A perusal of the order passed by the Commercial Court indicates that it runs into 67 paragraphs. Whereas paragraphs 1 to 40 are substantially reproduction of the plaintiff's case, contentions of the defendant-appellant have been recorded only in paragraph 41. Paragraph 42 of the order indicates three ingredients relevant for consideration of injunction application and paragraph 43, in three and half lines, indicates significance of the three ingredients. Paragraph 44 of the order, in bold letters, indicates that the patent granted in favour of the plaintiff would remain valid only upto 03.02.2035, whereafter it would come to an end and would not be extendable. Paragraph 45 reproduces Section 48 of the

Patents Act, paragraph 46 indicates that patent confers a legal privilege in favour of patentee for a period of 20 years from the date of moving of application and paragraphs 47, 48 and 49 again discuss the plaintiff's case. Then comes the finding part of the order and paragraph 50 reproduces the conclusion drawn by Dr. Pavan Kumar Thimmaraju, the expert/scientific advisor, whose report was annexed as Annexure-R.A.-3 to the rejoinder affidavit that was filed on 07.05.2026 only. The Commercial Court observed in two lines in paragraph 51 as under:

> **"51. अतः भारत सरकार के द्वारा सूचीबद्ध विशेषज्ञ के अनुसार, प्रतिवादी की मशीन वादी की पेटेंटेड प्रक्रिया और मशीन का उल्लंघन कर रही है।"**

**Findings on *prima facie* case**

57. Thereafter, *qua* this ingredient, Commercial Court observed as under:

> "52. जहाँ तक प्रतिवादी के BIS मानक 2017 का प्रश्न है, यह वादी के अधिकार के बाद आया, जो 2015 में उत्पन्न हुआ था। पेटेंट एक सांविधिक अधिकार है। पेटेंट के दायरे में आने वाला कोई भी कार्य, उत्पाद या प्रक्रिया, जो पेटेंट की स्वीकृति के बाद बनाई, उपयोग की गई या बेची गई, वह वादी के पेटेंट अधिकार का उल्लंघन है।
>
> 53. पेटेंट में बाह्य (outword) और आन्तरिक (inword) का उल्लेख नहीं है, इसलिए वादी के पेटेंट अधिकार की रक्षा पूरी तरह से होती है, चाहे वह बाह्य (outword) और आन्तरिक (inword)। पेटेंट स्पष्ट रूप से इनवर्ड फोल्डिंग मैकेनिज़्म को भी कवर करता है। इस संबंध में वादी के 23 ग, पृष्ठ संख्या 9 में कहा गया है कि संचालनात्मक स्थिति में स्प्रेडर बार (1) दिशा 'a' (आगे की ओर) में चलता है, जब बिना सिला (unstitched) कपड़ा स्प्रेडर बार के सामने पहुंचता है और यह कपड़े की ऊपरी परत को पीछे की ओर धकेलकर त्रिकोणीय फोल्ड बनाता है।
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> 54. सर्वो मोटर के कार्यों के संबंध में फोटोग्राफ और विशेषज्ञ रिपोटों के साथ-साथ प्रतिवादी के अपने तर्क का भी परीक्षण किया। प्रतिवादी संख्या 1 की मशीन भी सर्वो मोटर का उपयोग करती है और इस सर्वो मोटर का कार्य पेटेंट के दावा संख्या 1 में वर्णित सर्वो मोटर के समान है। प्रतिवादी संख्या 1 ने स्वीकार किया है कि उनकी मशीन में सर्वो मोटर का उपयोग फोल्डिंग प्लेट/बार की गति को नियंत्रित करने के लिए किया जाता है, जो कि पेटेंट विशिष्टताओं (specifications) में फ्लैट बार है। अतः वादी के पेटेन्ट दावा संख्या 1 और प्रतिवादी संख्या 1 की मशीन के विशिष्टताओं में कोई अंतर नहीं है।
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> 55. अतः यह स्पष्ट है कि वादी के पेटेंट संख्या 431032 के उल्लंघन में प्रतिवादी संख्या 1 के द्वारा मशीन निर्मित की जा रही है तथा उसके द्वारा चन्दौली जनपद में प्रतिवादी संख्या 2 को विक्रीत व प्राप्त कराई गयी है तथा प्रतिवादी संख्या 2 के द्वारा लगातार उसका प्रयोग किया जा रहा है। स्पष्ट है कि

अन्य भी इस प्रकार की मशीनें प्रतिवादी संख्या 1 के द्वारा निर्मित किया जा रहा है उससे वादी के पेटेन्ट के उल्लंघन में बिक्रीत किया जा रहा है।

**56. अतः वादी के पक्ष में प्रथम दृष्टया मामला बनता है।"**

Findings on Balance of Convenience

58. Findings on this ingredient are contained in paragraph 57 of the order, which reads as under:

"57. जहां तक सुविधा के संतुलन (balance of convenience) का प्रश्न है वादी मशीन का अपने शारीरिक व मानसिक श्रम व आर्थिक व्यय की कीमत पर अनुसंधान व विकास (Research and Development) करके पेटेन्ट प्राप्त किया है। यह भी महत्वपूर्ण है कि वादी को 03 फरवरी 2015 से पेटेन्ट दिनांक 03 फरवरी 2035 तक पेटेन्ट अधिकार मात्र 20 वर्षों के लिए प्राप्त है जिसमें से 11 वर्ष से अधिक समय व्यतीत हो चुके है। मात्र 09 वर्ष से भी कम अवधि बाद 03 फरवरी 2035 के बाद उसका पेटेन्ट राइट स्वतः समाप्त हो जायेगा तथा आम जनता उसका निर्माण व विक्रय कर सकती है। वादी के द्वारा अपने आर्थिक, शारीरिक व मानसिक प्रयासों से अनुसंधान के आधार पर उक्त उपलब्धि प्राप्त की गयी है, जिसे इस स्तर पर संरक्षित किया जाना आवश्यक है। **ऐसा सम्पूर्ण मानवता के विकास के लिए भी आवश्यक है। अतः सुविधा का सन्तुलन भी वादी के पक्ष में है।"**

Findings on Irreparable Loss

59. On this ingredient, findings of the Commercial Court are contained in paragraph 58 of the order, which reads as under:

"58. जहां तक अपूर्णनीय क्षति (irreparable loss) का प्रश्न है वादी को 03 फरवरी 2015 से पेटेन्ट दिनांक 03 फरवरी 2035 तक पेटेन्ट अधिकार मात्र 20 वर्षों के लिए प्राप्त है जिसमें से लगभग 11 वर्ष से अधिक समय व्यतीत हो चुके है। 03 फरवरी 2035 के बाद उसका पेटेन्ट राइट स्वतः समाप्त हो जायेगा तथा आम जनता उसका निर्माण व विक्रय कर सकती है। वादी के द्वारा अपने आर्थिक व शारीरिक मानसिक प्रयासों से अनुसंधान एवं विकास के आधार पर उक्त उपलब्धि प्राप्त की गयी है, जिसे इस स्तर पर संरक्षित किया जाना आवश्यक है। अस्थाई निषेधाज्ञा प्रदत्त न करने से वादी अपने पेटेन्ट अधिकार का उपयोग नहीं कर पायेगा यदि उसे अस्थाई निषेधाज्ञा प्रदत्त नहीं किया गया तो शेष बचे समय का वह अपने पेटेन्ट अधिकार के एकाधिकार का उपयोग नहीं कर पायेगा जिससे उसके पैटेन्ट अधिकार का उद्देश्य विफल होगा, जिससे वाद का उद्देश्य भी विफल हो जायेगा। **अतः अपूर्णनीय क्षति भी वादी के पक्ष में है।"**

60. In the opinion of the Court, findings on *prima facie* case are quite cursory in nature without going into the defence of the respondent and by incorrectly assuming as if the plaintiff's contention had been admitted by the defendant. Further, the observations of the Commercial Court that since 11 years have passed since when the application for patent was

moved and the period of patent granted in favour of the plaintiff being 20 years out of which only 9 years are left upto 03.02.2035, balance of convenience and irreparable loss lie in favour of the plaintiff, are wholly unsustainable. As a matter of fact, the remaining period of existence of patents right in favour of the plaintiff cannot be decisive of the ingredients, i.e., balance of convenience and irreparable loss and the Commercial Court should have dealt with the matter in light of the settled principles on which these components/ingredients are required to be decided.

61. Surprisingly, observations of the Commercial Court that since the plaintiff has got the achievement on the basis of research through its economic, physical and mental efforts, which need to be protected at this stage, which is also necessary for the development of the entire humanity and, therefore, balance of convenience is also in favour of the plaintiff, are totally out of the context and as to how a device and method for controlling the Motion of Spreader Bar are necessary for the development of the entire humanity is not understandable at all.

62. The concluding part of the Commercial Court's order, as contained in paragraph 62 also needs reference. The same is reproduced as under:

> "62. प्रतिवादी संख्या 1 की ओर से Kewal Ashokbhai Vasoya and Another Vs. Suarabhakti Goods Pvt. Ltd. 2022- SCC OnLine Bom 3335 का आधार लिया गया है जो एकपक्षीय अस्थाई निषेधाज्ञा के सम्बन्ध में विधि प्रतिपादित किया गया है। हस्तगत मामले में अन्तरिम/अस्थाई निषेधाज्ञा के प्रार्थना-पत्र पर उभय पक्षों के अधिवक्तागण को सुना जा चुका है तथा गुण-दोष पर आदेश पारित किया जा रहा है। अतः वाद विधि से प्रतिवादी संख्या 1 को कोई लाभ मिलता प्रतीत नहीं होता है। प्रतिवादी संख्या 1 की ओर Zydus Lifescience Limited Vs. E.R. Squibb and Sons LLC & Ors. FAO (OS) (COMM) 120/2025 माननीय दिल्ली उच्च न्यायालय का निर्णय दिनांकित 12.01.2026 का आधार लिया गया है। मैंने उक्त वाद विधि का अवलोकन किया। उक्त मामले में वादी ने दावा-से-उत्पाद (claim-to-product) मैपिंग प्रस्तुत नहीं की थी जिससे उल्लंघन सिद्ध हो। निषेधाज्ञा रद्द होने का कारण दावा-से-उत्पाद मैपिंग की अनुपालन न होना था, जो कि हस्तगत मामले में लागू नहीं होता **क्योंकि हस्तगत मामले में वादी ने स्पष्ट रूप से दावा-से-उत्पाद मैपिंग प्रस्तुत की है, जो कि जो वाद-पत्र में दी गई है और साथ ही स्वतंत्र विशेषज्ञ वैज्ञानिक सलाहकार की तकनीकी निरीक्षण और राय रिपोर्ट में भी विस्तृत रूप से दर्शाई गई है। तकनीकी विशेषज्ञ श्री पवन कुमार थिम्माराजू द्वारा दी गई है। वे "वैज्ञानिक सलाहकार" हैं और उनका**

> **नाम भारत सरकार के Controller General of Patents, Designs & Trade Marks के सार्वजनिक नोटिस दिनांक 04.09.2025 में सूचीबद्ध है। इस वैज्ञानिक सलाहकार ने भी दावा-मैपिंग प्रदान की है और विशेष रूप से रिपोर्ट के पृष्ठ 13 में सूट पेटेंट के दावा संख्या 1 का मैपिंग प्रस्तुत किया है। इसके अतिरिक्त वादी के द्वारा तकनीकी रिपोर्ट भी प्रस्तुत किया गया है जिसमें भी समानता दर्शित की गयी है।"**

63. A bare perusal of paragraph 62 indicates that the judgment cited on behalf of the defendant, i.e., **Zydus Lifesciences Limited** (supra) was held to be inapplicable based upon the opinion expressed by Dr. Pavan Kumar Thimmaraju and on no other basis except the observation in one line that the plaintiff had produced claim-to-product mapping.

64. As to what is the statutory scheme as regards opinion of scientific advisors, Section 115 of the Patent Act, 1970 needs reference and the same is reproduced as under:

> "**115. Scientific advisers.**—(1) In any suit for infringement or in any proceeding before a court under this Act, **the court may** at any time, and whether or not an application has been made by any party for that purpose, **appoint an independent scientific adviser**, to assist the court or to inquire and report upon any such question of fact or of opinion **(not involving a question of interpretation of law)** as it may formulate for the purpose.

65. In the present case, there is no dispute that the expert report formed part of the rejoinder affidavit filed on 07.05.2026, whereafter matter was heard by the Commercial Court on 13.05.2026 and impugned order was passed on 22.05.2026. In view of chronology of said events, contents of the expert report, limitations indicated under Section 115 of the Patents Act, 1970 which also provides that independent scientific adviser can be appointed by the Court and the ratio in the judgments in the cases of **Ramesh Chandra Agrawal** (supra), **The New India Assurance Co. Ltd.** (supra), **Maharaja Agrasen Hospital** (supra) and **Sulphur Mills Limited** (supra), we are of the view that the Commercial Court has erred in passing its order only on the conclusion drawn by the expert without carefully perusing the report, extent of its admissibility and the veracity of components indicated therein.

66. In the case of **Guala Closures SPA** (supra), it has been held that claim construction is generally the first and foremost exercise carried out

in adjudicating patent infringement suits. Determination of the true construction of the claims of a patent specification, which are to be read in the context of the specification, is commonly one of the most significant issues, if not the single most significant issue, in litigation involving patents. It has also been held that when significant operational disparities are found between the plaintiff's patent and the defendants' product, any injunction or legal action for infringement would unduly harm the defendants' business interests and if no irreparable harm is demonstrated, injunction should not be granted. Similar view has been taken in the case of **Jay Switches India Pvt. Ltd.** (supra) and **Automat Irrigation Pvt. Ltd.** (supra).

67. In the case of **Zydus Lifesciences Limited** (supra), it has been held that a clear cut case of patent infringement within the meaning of Section 48 is required so as to grant injunction and that exercise must be done on the basis of product-to-claim mapping and there can be no compromise to this aspect. In the case of **M/s Bishwanath Prasad Radhey Shyam** (supra), Hon'ble Supreme Court has held that the proper way to construe a specification is not to read the claims first and then see what the full description of the invention is, but first to read the description of the invention, in order that the mind may be prepared for what it is, that the invention is to be claimed, for the patentee cannot claim more than he desires to patent. The case of **Parkinson v. Simon Lord Esher M. R.** (supra) enunciated that as far as possible, the claims must be so construed as to give an effective meaning to each of them, but the specification and the claims must be looked at and construed together.

68. In the case of **Crystal Crop Protection Limited** (supra), it has been held that if there is no 'literal infringement', the Court has to consider 'infringement by equivalents'. It was held that in cases involving 'infringement by equivalent products', the Court must assess questions, which are outlined in paragraph 66 of the judgment that reads as below:

> "66. ...While the language of some or all of the questions may sometimes have to be adapted to apply more aptly to the specific

> facts of a particular case, the three reformulated questions are as follows:
>
> i) Notwithstanding that it is not within the literal meaning of the relevant claim(s) of the patent, does the variant achieve substantially the same result in substantially the same way as the invention, i.e. the inventive concept revealed by the patent?
>
> ii) Would it be obvious to the person skilled in the art, reading the patent at the priority date, but knowing that the variant achieves substantially the same result as the invention, that it does so in substantially the same way as the invention?
>
> iii) Would such a reader of the patent have concluded that the patentee nonetheless intended that strict compliance with the literal meaning of the relevant claims of the patent was an essential requirement of the invention?
>
> In order to establish infringement in a case where there is no literal infringement, a patentee would have to establish that the answer to the first two questions was 'yes' and that the answer to the third question was 'no'."
>
> (emphasis by Court)

69. In the case of **FMC Corporation and others vs. Natco Pharma Limited** (supra), the doctrine of equivalents was elaborately dealt with by Delhi High Court, wherein it was held that the doctrine has been accepted in the jurisprudence to protect patent rights from being infringed by infringers using colourable method of making some minor, insubstantial variations to escape the reach of the patent. The doctrine, in essence, seeks to address infringers who introduce minor variations as subterfuge to defeat patent rights. The doctrine is applied to ascertain whether there is an infringement by excluding any insubstantial, minor or trivial changes that are designed to deprive the patentee of the benefits of his invention.

70. It has further been held that the triple test; i.e., substantially the same function, in substantially the same way and to yield the same result, is applied primarily to products or devices. A device which substantially performs the same function in substantially the same way and accomplishes the same result, may infringe the patent rights. However, when it comes to a process or a method, this test may require to be suitably adapted. In a case where a method of achieving a result is the essence of the patent, achieving substantially the same result would

clearly not be relevant. The test of substantial identity of the competing methods must necessarily be viewed by identifying the essential elements and steps of the said process and then examining the manner in which the key elements interact in each essential step that the process/method entails to yield the given result.

71. On balance of convenience and irreparable harm, the Delhi High Court, in the case of **F. Hoffmann-LA Roche Ltd.** (supra), has held that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage.

72. It has further been held that if the defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark upon a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial. The extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of his succeeding at the trial, is always a significant factor in assessing where the balance of convenience lies.

73. As far as the aspect of concealment of material facts, *vis-a-vis* pre-existence on an identical patent is concerned, it has been laid down in the case of **Freebit AS** (Single Bench-supra), **Freebit AS** (Division

Bench-supra), **Seema Arshad Zaheer** (supra) and **Nugenesys Pharmaceuticals Pvt. Ltd.** (supra) that if there is gross suppression and misrepresentation of material facts, even the plaintiff is found not to have approached the Court with clean hands and has furnished incorrect information regarding corresponding products/patent and their status, his conduct dis-entitles him to obtain injunction and if injunction has been granted, not only the same is liable to be vacated but the injunction application itself is liable to be dismissed.

74. However, at the present stage, we are not recording finding either way as to whether there was any concealment and if at all, it was there the alleged concealment of previously existing patent was at all relevant or even should have been disclosed in view of Section 10(4) of the Act.

**CONCLUSION:**

75. In view of the above discussion, we are of the considered opinion that the Commercial Court has not properly dealt with case of the rival parties and contentions of both sides and the issues involved *inter se* parties as regards design, shape, functional attributes of different components of the machines being manufactured by the parties and the conflict as regards existence of a spreader bar, flaring plate, folding plate, inward/outward movement of component(s), servo motors, servo mechanism for controlling the motion of a spreader bar, creation/making of a triangular fold at the corner of the tubular fabric, co-ordinated movement of the fabric engaging element, shape based distinctions, distinctive disclosures in the claim language, process based comparison, element-by-element comparison, driving rollers, driving belt, belt and link assembly etc. have not been appropriately dealt with by the Commercial Court.

76. We are also of the view that the findings recorded by the Commercial Court on all three basic ingredients, i.e., *prima facie* case, balance of convenience and irreparable loss being wholly cursory in nature and contrary to the law as discussed herein-before, the injunction order passed by it cannot be sustained. At the same time, since the

Commercial Court has not examined the dispute *inter se* parties in light of the provisions of Patents Act, 1970 and material available on record, we do not deem it appropriate to allow or reject the injunction application in this appeal; rather we deem it proper to remit the matter to the Commercial Court for re-determination of the injunction application on merits.

77. The appeal is **allowed**.

78. The order dated 22.05.2026 passed by the Commercial Court, Varanasi in Original Suit No. 02 of 2026 is hereby **set aside.**

79. The matter is remanded back to the Commercial Court to re-decide the injunction application on its own merits in accordance with law keeping in view the observations made herein-before with utmost expedition.

80. Since various documents were produced before this Court by both sides during the course of hearing and the time-line during which the injunction application was decided, particularly with reference to proceedings held on 07.05.2026 and 13.05.2026 and the order passed on 22.05.2026, being of significance, we grant **liberty to the parties** to file additional documents alongwith appropriate applications/affidavits which shall also be given thoughtful consideration by the Commercial Court while passing a fresh order.

**(Kshitij Shailendra, J) (Arun Bhansali, CJ)**

**November 04, 2026**
Sazia/AKShukla

Digitally signed by :-
ANIL KUMAR SHUKLA
High Court of Judicature at Allahabad