* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **FAO(OS) No.16 OF 2014**

Pronounced on:07.11.2014

MAJ. (RETD.) SUKESH BEHL & ANR. ..... Appellants
Through: Mr. Ajay Sahni along with Mr.N.K. Bhardwaj, Mr. Dushyant Rastogi, Ms.Kanika, Mr. Bikash Ghorai, Advs.

Versus

KONINKLIJKE PHILLIPS ELECTRONICS ..... Respondent
Through: Mr. Sudhir Chandra, Sr. Advocate with Mr. Praveen Anand, Ms. Vaishali Mittal, Mr.Gurpreet Singh Kahlon & Ms. D. Neha Reddy, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

: Ms.G.ROHINI, CHIEF JUSTICE

1. The appellants herein are the defendants in CS(OS) No.2206 of 2012. The said suit is filed by the respondent herein seeking a decree for permanent injunction restraining the defendants from infringing its essential DVD Video/DVD ROM Disc Patents, in particular Indian Patent with registered No.218255 and for other incidental reliefs.

2. The defendants/appellants herein filed written statement making a counter claim for revocation of the suit patent under Section 64(1)(m) of the Patents Act, 1970 (for short "the Patents Act") for non-compliance of the provisions of Section 8. Subsequently, the defendants filed I.A. No.21411

of 2012 under Order XII Rule 6 of Civil Procedure Code, 1908 (hereinafter referred as CPC) with a prayer to pass a decree on the basis of the alleged admissions made by the plaintiff. The said application was dismissed by the learned Single Judge by order dated 06.11.2013. Hence, this appeal by the defendants.

3. We have heard the learned counsel for both the parties and perused the material available on record.

4. For the sake of convenience, we shall hereinafter refer the appellants and the respondent as the defendants and plaintiff respectively.

5. The plaintiff who was granted Patent No. 218255 on 13.02 2008 for "method for converting information words to modulated signal", filed CS(OS) No.2206 of 2012 on 24.07.2012 alleging that the said patent is being infringed by the defendants. The defendants, in their written statement, had not only denied the plaint allegations but also made a counter claim for revocation of the suit Patent on the ground of failure of the plaintiff to disclose to the Controller of Patents (COP) the information as required by Section 8 of the Patents Act 1970, read with Rule 12 of the Patents Rules, 2003, regarding pendency of any application for a patent in the country outside India in respect of the same or substantially the same invention.

6. After the said written statement was filed, the Patent Attorney of the plaintiff by letter dated 14.09.2012 informed the COP, Patent Office, Chennai that certain details regarding the corresponding foreign filings were not submitted during the prosecution of Patent No.218255 and requested the

COP to take on record the enclosed status list of corresponding foreign applications. Along with the said letter dated 14.09.2012, an affidavit was also filed before the COP by the plaintiff's Patent Attorney stating that though he had received instructions along with an updated status list of corresponding applications consisting of three pages from the plaintiff on 27.07.2004 itself, the information in relation to corresponding foreign applications that was printed on the reverse of the first page was inadvertently omitted while submitting the same to the Patent Office and that the omission was purely accidental.

7. On 23.11.2012, the defendants filed I.A. No.21411/2012 under Order XII Rule 6 of CPC contending that the letter dated 14.09.2012 filed by the Patent Attorney of the plaintiff before the COP amounts to admission of suppression of vital information by the plaintiff and that the same being in contravention of the provisions of Section 8 of the Patents Act, a decree has to be passed in their favour by allowing the counter claim and revoking the suit patent. It is further contended that the statement of the Patent Attorney in the said letter that "During the prosecution of granted patent, certain details regarding corresponding foreign filings were not submitted to the Indian Patent Office" constitutes 'clear and unequivocal admission' *prime facie* attracting the ground for revocation of patent under Section 64(1)(m) of the Patents Act.

8. The plaintiff contested IA No. 21411 of 2012 contending that the information furnished to COP vide letter dated 14.09.2012 does not amount to admission so as to pass an order/judgment under Order XII Rule 6 of CPC.

9. The learned Single Judge by the order under appeal dated 06.11.2013 dismissed I.A. No.21411 of 2012 holding as under:-

> "14. It requires to be noted that while the Plaintiff does not deny that a part of the information concerning the pending foreign applications was inadvertently not disclosed, there is no admission as to the withholding of that information being deliberate or that there was wilful suppression of such information. That surely would be a matter for evidence. Further, the question whether the non-disclosure of the above information contained on the reverse of the first page in the first instance before the COP was material to the grant of the patent raises a triable issue. It is not possible at the present stage for the Court to form a definitive opinion on the above aspects. If at the end of the trial the Court, after examining the evidence, agrees with the Defendants that the information that was withheld was material to the grant of the patent itself, it might proceed to revoke the patent. Alternatively, it might disagree with the Defendant and decline to revoke the patent. In other words, that determination would have to await the conclusion of the trial.
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> 15. For the aforementioned reasons, the Court is of the view that it is not possible to grant the prayer made in this application by the Defendant under Order XII Rule 6 CPC."
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> (emphasis supplied)

10. The said order is assailed before us on various grounds including that the admitted failure of the plaintiff to comply with the provisions of Section 8 of the Patents Act itself being a ground for revocation of the patent under the provisions of Section 64(1)(m) of the Patents Act, the learned Single

Judge ought to have revoked the suit patent and allowed the application filed under Order XII Rule 6 of CPC.

11. Placing reliance upon ***Chemtura Corporation v UOI***, **2009(41) PTC 260 (Del),** it is vehemently contended by Sri Ajay Sahni, learned counsel for the appellants/defendants that the provisions of Section 8 of the Patents Act are mandatory, and therefore any violation of Section 8 shall result in revocation of patent under Section 64(1)(m) of the Patents Act.

12. The further contention is that the term "may" in Section 64(1) of the Patents Act shall, in the context, be construed as "shall" and therefore, the contention of the plaintiff that the omission to furnish the particulars of foreign filings was only accidental and not intentional deserves no consideration. In support of the said submission, the learned counsel for the appellants relied upon ***May George v Special Thasildar and Ors,*** **2010 (13) SCC 98**, ***Satheedevi Vs. Prasanna & Anr.*** **AIR 2010 SC 2777,** ***Raghunath Rai Bareja & Anr. Vs. Punjab National Bank & Ors.*** **(2007) 2 SCC 230** and ***State of Uttar Pradesh Vs. Jogendra Singh,*** **AIR 1963 SC 1618**.

13. Pointing out that the plaintiff on his own had made the application dated 14.09.2012 i.e. more than four years after the grant of patent in favour of the plaintiff, it is also contended by the learned counsel for the appellants/defendants that it constitutes an unequivocal admission regarding non-compliance of the statutory provisions of Section 8, and thus, in terms of Order XII Rule 6 of CPC the defendants are entitled to a decree for revocation of the suit patent as set out in their counter claim. In support of the said contention, the learned counsel cited ***Uttam Singh Dugal & Co.***

Ltd. Vs. Union Bank of India & Ors., **AIR 2000 SC 2740** wherein it is held that having regard to the provisions of Order XII Rule 6 of CPC which are meant for obtaining speedy justice, the Court is bound to pass a judgment for admitted claim.

14. Per contra, Sri Sudhir Chandra, the learned Senior Counsel appearing for the respondent/plaintiff while placing reliance upon ***Raj Kumar Chawla v. Lucas Indian Services,*** **AIR 2006 Delhi 266** and ***Manisha Commercial Ltd. v. N.R. Dongre,*** **AIR 2000 Delhi 176,** contended that the power under Order XII Rule 6 CPC is only discretionary and, therefore, the learned Single Judge is justified in the facts and circumstances of the case in declining to pass a judgment as sought by the defendants. He further relied upon ***Uttam Singh Duggal & Co. Ltd. v. United Bank of India & Ors.,*** **2000 (7) SCC 120** and ***Parivar Seva Sansthan v. Dr. (Mrs.) Veena Kalra & Ors.,*** **AIR 2000 Delhi 349** to substantiate his contention that a clear, unambiguous, unequivocal and unqualified admission is required for a decree to be passed under Order XII Rule 6 of CPC.

15. The learned senior counsel for the respondent has also cited ***Rafiq v. Munshi Lal,*** **AIR 1981 SC 1400** in support of his submission that the respondent/plaintiff cannot be put through the hardship of a decree on admission under Order XII Rule 6 CPC, merely on account of an inadvertent and bona fide mistake of his counsel.

16. While relying upon ***F-Hoffman-La Roche Ltd. v. Cipla Ltd.,*** **2012 (52) 1 PTC (Del)** the learned senior counsel further contended that revocation of a patent is not warranted unless the Court finds that the

omission was deliberate and the information not submitted was material to grant of patent.

17. The counsel for the respondent has also pointed out that the omission being unintentional, clerical and on account of a bona fide error on the part of the Patent Attorney, the plaintiff can be allowed to amend the specifications at any stage of the proceedings in terms of Section 58 of the Patents Act and therefore, invalidation of the Patent in question is not warranted.

18. For proper appreciation of the rival contentions noticed above, it is necessary to refer to some of the provisions of the Patents Act and the Rules made thereunder.

> "**Section 8**. **Information and undertaking regarding foreign applications**.—(1) Where an applicant for a patent under this Act is prosecuting either alone or jointly with any other person an application for a patent in any country outside India in respect of the same or substantially the same invention, or where to his knowledge such an application is being prosecuted by some person through whom he claims or by some person deriving title from him, he shall file along with his application or subsequently [within the prescribed period as the Controller may allow—
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> (a) a statement setting out detailed particulars of such application; and
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> (b) an undertaking that, up to the date of grant of patent in India, he would keep the Controller informed in writing, from time to time, of detailed particulars as required under clause (a) in respect of every other application relating to the same or substantially the same invention, if any, filed in any country outside India subsequently to the filing of the

statement referred to in the aforesaid clause, within the prescribed time.

(2) At any time after an application for patent is filed in India and till the grant of a patent or refusal to grant of a patent made thereon, the Controller may also require the applicant to furnish details, as may be prescribed, relating to the processing of the application in a country outside India, and in that event the applicant shall furnish to the Controller information available to him within such period as may be prescribed."

Section 64. Revocation of patents.—(1) Subject to the provisions contained in this Act, a patent, whether granted before or after the commencement of this Act, may, be revoked on a petition of any person interested or of the Central Government by the Appellate Board or on a counter-claim in a suit for infringement of the patent by the High Court on any of the following grounds, that is to say—

(a) to (l) xxx xxx xxx

(m) that the applicant for the patent has failed to disclose to the Controller the information required by section 8 or has furnished information which in any material particular was false to his knowledge;

Rule 12. Statement and undertaking regarding foreign applications.—(1) The statement and undertaking required to be filed by an applicant for a patent under sub-section (1) of section 8 shall be made in Form 3.

(1A).The period within which the applicant shall file the statement and undertaking under sub-section (1) of section 8 shall be six months from the date of filing the application.

Explanation.—For the purpose of this rule, the period of six months in case of an application corresponding to an international application in which India is designated shall be reckoned from the actual date on which the corresponding application is filed in India.

> (2) The time within which the applicant for a patent shall keep the Controller informed of the details in respect of other applications filed in any country in the undertaking to be given by him under clause (b) of sub-section (1) of section 8 shall be six months from the date of such filing.
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> (3) When so required by the Controller under sub-section (2) of section 8, the applicant shall furnish information relating to objections, if any, in respect of novelty and patentability of the invention and any other particulars as the Controller may require which may include claims of application allowed within six months from the date of such communication by the Controller.

19. A combined reading of Section 8 of the Patents Act and Rule 12 of the Patents Rules shows that the applicant along with his application for a patent or subsequently within six months from the date of filing the application is required to file a statement furnishing the detailed particulars of the application, if any, being prosecuted by him in a foreign country for a patent in respect of the same or substantially same invention. It is also necessary for the applicant to file an undertaking that up to the date of grant of patent, he would keep the Controller informed in writing from time to time of the detailed particulars of the applications, if any, filed subsequently in a foreign country for a patent in respect of the same or substantially same invention, within six months from the date of such filing. Failure to disclose the abovesaid information required by Section 8 is one of the grounds for revocation of the Patent under Section 64(1)(m) of the Patents Act.

20. In the case on hand, it is alleged by the defendants that as the plaintiff himself had admitted before the COP that the details of the corresponding

foreign applications as required under Section 8(1) of the Patents Act were not filed, the revocation provisions of Section 64(1)(m) are attracted and consequently the revocation of the suit patent shall automatically follow. To that effect, the defendants filed IA No.21411/2012 seeking a decree for revocation of the suit patent under Order XII Rule 6 of CPC on the basis of the alleged admission made by the plaintiff before the COP.

21. As noticed above, the learned Single Judge was of the view that whether there was an admission as to wilful suppression of the information required by Section 8(1) of the Patents Act and whether the information that was withheld was material to the grant of the suit patent is a matter for evidence and therefore the prayer to pass a judgment revoking the suit patent under Order XII Rule 6 of CPC is not possible.

22. Assailing the said conclusion of the learned Single Judge, it is vehemently contended by the learned counsel for the appellants/defendants that the expression 'shall' in Section 8(1) of the Patents Act casts a mandatory duty upon an applicant for a patent to furnish the information about prosecution of the similar application abroad and failure to furnish such information would straightaway attract the revocation provisions of Section 64(1). Pointing out that Section 64(1) opens with the words 'subject to the other provisions contained in this Act', the learned counsel would further contend that the exceptions contained in Sections 34 and 58 of the Patents Act are not applicable to Section 64(1) and, therefore, the exercise of power of revocation under Section 64(1) does not involve the element of discretion. While seeking to draw a distinction between the two parts of Clause (m) of Section 64(1), i.e., (i) failure to disclose the information

required by Section 8 and (ii) disclosure of / furnishing false information, it is also contended that the question whether the information is material to the grant of the patent is relevant only for the purpose of the second part but not for the purpose of the first part. Thus, according to the learned counsel once it is admitted that the applicant had failed to furnish the information required by Section 8, the first part of Section 64(1) is attracted and the revocation of the patent would automatically follow.

23. We have given our thoughtful consideration to the submissions advanced on behalf of the appellants.

24. A plain reading of Section 8(1) of the Patents Act which contains the expression 'shall' indicates that the applicant is under an obligation to furnish to the Controller not only the information relating to the application being prosecuted by the applicant for a patent in any country outside India in respect of the same or substantially the same invention i.e. the particulars of the pending application but also to give an undertaking that he would continue to furnish up to the date of grant of patent such information from time to time in respect of the applications, if any, made in the foreign countries subsequently. The plaintiff in the case on hand has admittedly complied with the said requirement and both the statement under Section 8(1)(a) and the undertaking under Section 8(1)(b) were filed. However, the allegation is that the plaintiff failed to furnish the details of the corresponding foreign applications in terms of the undertaking given under Section 8(1)(b) within the period of six months provided under Rule 12(2) of the Patents Rules.

25. The material on record shows that the plaintiff made the application for the suit patent on 13.02.1995 and the patent has been granted on 31.03.2008 for the term of twenty years from 13.02.1995. In terms of the undertaking given by him under Section 8(1)(b) of the Patents Act while making the application for grant of suit patent, the plaintiff, till the date of grant of patent is required to furnish to the Controller the details of the applications, if any, filed in the foreign countries relating to the same or substantially the same invention from time to time within six months from the date of such filing. A perusal of the affidavit filed by the Patent Agent enclosed with the letter dated 14.09.2012 filed before the COP shows that details of corresponding foreign applications as required under Section 8(1)(b) of the Patents Act were filed by the plaintiff with the Indian Patent Office on 17.03.1999, 13.03.2002 and 31.08.2004. However, it appears that certain information was omitted while filing the details of the corresponding foreign applications on 31.08.2004. The relevant portion of the affidavit of the Patent Agent may be extracted hereunder for ready reference:

> *"6. I say that in relation to the aforementioned patent application, the details of the corresponding foreign applications as required under Section 8 of the Indian Patents Act were filed with the Indian Patent Office on the following dates and are enclosed as* ***Annexure B*** *(Colly):*
>
> - *March 17, 1999*
> - *March 13, 2002 and*
> - *August 31, 2004*
>
> *7. I say that we received instructions from the patentee/applicant to respondent to the First Examination Report by their letter of July 16, 2004 and was received by us*

on July 27, 2004. A copy of the said letter with the annexures is enclosed as Annexure C.

8. I say that along with the instructions from the patentee/applicant, we received an updated status list of corresponding applications for three pages with the second page printed on the back of the first page.

9. I say that inadvertently my paralegal assisting me missed out the information in relation to corresponding foreign applications that was printed in the reverse of the first page s forwarded to us by the patentee/applicant.

10. I say that the said omission was purely accidental with no intention to withhold any information from the Indian Patent Office.

11. I say that the information that was inadvertently omitted was relating to corresponding granted patents and corresponding pending patent applications in other jurisdiction.

12. I say that in view of the above, we are now enclosing herewith the status list of all corresponding foreign applications along with their status as was received by us from the patentee/applicant.

13. I say that the documents being filed along with my affidavit be taken on record."

26. A reading of the above affidavit shows that there was no failure as such on the part of the plaintiff to comply with the undertaking furnished in terms of Section 8(1)(b) of the Act, but some of the details contained on the reverse of the first page of the list of the foreign applications filed on 31.08.2004 were omitted for the reasons explained by the Patent Attorney in his affidavit. The plaintiff in his reply to IA No.21411/2012 explained that the full and complete information (comprising of a list running into three

pages) was submitted by the plaintiff to the Attorney handling the patent portfolio on 16.03.2004 and that it was confirmed by the Attorney that the complete information was received by them, but inadvertently one of the pages containing additional information was missed out by the office personnel. It was also specifically pleaded by the plaintiff that the inadvertently omitted details do not prejudice the grant of the suit patent in any manner as the corresponding patents/patent applications were not material to the grant of the suit patent.

27. The fact that the plaintiff filed the details of the corresponding foreign application on 31.08.2004 is not in dispute, however, the same is not the complete information and according to the plaintiff, the omission to furnish a part of the information, which is stated to be not material to the grant of the suit patent, was not deliberate. That being so, it cannot be straightaway concluded that the plaintiff had failed to comply with the mandatory provisions of Section 8(1) of the Patents Act. As rightly held by the learned Single Judge, the said question can be answered only at the conclusion of the trial.

28. Coming to the question whether the failure to comply with the requirement of Section 8 of the Patents Act would invariably lead to the revocation of the suit patent under Section 64(1)(m) of the Patents Act, we may at the outset point out that the word 'may' employed in Section 64(1) indicates that the provision is directory and raises a presumption that the power of revocation of patents conferred under Section 64(1) is discretionary. Ordinarily, the word 'may' is not a word of compulsion. It is

an enabling word and it confers capacity, power or authority and implies discretion.

29. It is sought to be contended by the learned counsel for the appellants/defendants that having regard to the fact that Section 8 is a mandatory provision and its non-compliance is a ground for revocation of the patent under Section 64(1)(m), the word 'may' employed in Section 64(1) should be construed to mean imperative. In support of the said submission, the learned counsel placed much reliance upon ***State of Uttar Pradesh vs. Jogendra Singh*, AIR 1963 SC 1618**, wherein it is held:

> "It is well settled that the word "may" is capable of meaning "must" or "shall" in the light of the context. It is also clear that where a discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command. Sometimes, the legislature uses the word "may" out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed."

30. The law is well settled that the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question o giving effect to the policy or object can

legitimately arise. (Vide ***Kanai Lal Sur vs. Paramnidhi Sadhukhan*** **AIR 1957 SC 907)**

31. It is also a well settled principle of law that in construing a statutory provision, the first and foremost rule of construction is the literary construction. All that the Court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statues. The other rules of construction are called into aid only when the legislative intent is not clear. (Vide ***Heera Lal Ratan Lal vs. STO*** **(1973) 1 SCC 216**, ***Swedish Match AB vs. SEBI*****, AIR 2004 SC 4219** and ***Prakash Nath Khanna vs. CIT*** **(2004) Criminal Law Journal 3362)**

32. Further, as held in ***P.K.Unni Vs. Nrimala Industries*** **(1990) 2 SCC 378**, the legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result.

33. In ***Gurudevdatta VKSSS Maryadit vs. State of Maharashtra*** **(2001) 4 SCC 534** it is held that*:*

> "It is a cardinal principle of interpretation of statute that the words of a statue must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary

meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The Courts are adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statue as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute."

34. Referring to the aforesaid decisions, it has been summed up in ***Raghunath Rai Bareja and Anr. vs. Punjab National Bank*** **(2007) 2 SCC 230** as under**:**

> **"**23. In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be followed (see G.P. Singh's Principles of Statutory Interpretations, 9th Edn. pp 45-49). Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint in this connection."

35. In ***May George vs. Special Tahsildar and Ors.*** **(2010) 13 SCC 98**, it is further held**:**

> "24. The law on this issue can be summarised to the effect that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance of the provision could render entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of Legislature

> and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject matter and object of the statutory provisions in question. The Court may find out as what would be the consequence which would flow from construing it in one way or the other and as to whether the Statute provides for a contingency of the non-compliance of the provisions and as to whether the non-compliance is visited by small penalty or serious consequence would flow therefrom and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid."

36. Thus, it is clear that ordinarily it is not proper for the Court to depart from the literal rule as that would really be amending the law in the garb of interpretation which is impermissible under law. However, in case of ambiguity while determining whether a provision is mandatory or directory, in addition to the language used therein, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve.

37. In the present case, it is no doubt true that it is mandatory to comply with the requirements under Section 8(1) of the Patents Act and non-compliance of the same is one of the grounds for revocation of the patents under Section 64(1)(m). However, the fact that the word "may" is used in Section 64(1) itself indicates the intention of the legislature that the power conferred thereunder is discretionary. The mere fact that the requirement of furnishing information about the corresponding foreign applications under Section 8(1) is mandatory, in our opinion, is not the determinative factor of the legislative intent of Section 64(1). We found that the language of Section 64(1) is plain and unambiguous and it clearly confers a discretion upon the authority/Court while exercising the power of revocation. The

interpretation of the provisions of Section 64(1) as discretionary, in our considered opinion, does not result in absurdity nor in any way effect the rigour of the mandatory requirements under Section 8 of the Act.

38. Therefore, we are of the view that though any violation of the requirement under Section 8 may attract Section 64(1)(m) for revocation of the patent, such revocation is not automatic.

39. In ***Chemtura Corporation Case*** *(supra)*, this Court was dealing with grant of injunction under Order XXXIX Rule 1 and 2 of CPC. Having recorded a prima facie satisfaction that there had been a failure by the plaintiff to comply with the mandatory requirement of Section 8(1), this Court held that the interim injunction in favour of the plaintiff cannot be continued. The question whether the power conferred under Section 64(1) of the Patents Act for revocation of the patent is discretionary or mandatory neither fell for consideration nor adjudicated by the Court in the said decision. Therefore, the learned Single Judge had rightly distinguished ***Chemutra Corporation Case*** (*supra*) relied upon by the learned counsel for the appellants/defendants.

40. For the aforesaid reasons, we are of the view that the power to revoke a patent under Section 64(1) is discretionary and consequently it is necessary for the Court to consider the question as to whether the omission on the part of the plaintiff was intentional or whether it was a mere clerical and *bonafide* error.

41. The next question that requires consideration is whether the affidavit filed by the Patent Attorney of the plaintiff before the Controller of Patents

stating that though the information relating to foreign filings was furnished by the plaintiff, inadvertently a portion of the same was omitted, would amount to admission to pass a judgment in terms of Order XII Rule 6 of CPC.

42. Order XII Rule 6 of CPC which provides for granting a decree on the basis of the admission reads as under:-

> **"ORDER XII:Admissions**
>
> **1 to 5.** xxx xxx xxx
>
> **6.Judgment on admissions**.- (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of an party or of its own motion and without waiting for the determination of any other question between the parties, make such Order or give such judgment as It may think fit, having regard to such admissions.
>
> (2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

43. Apparently, the purport of Order XII Rule 6 is to enable the party to obtain speedy justice to the extent of the relevant admission. However, as per the settled law, before a Court can act under Rule 6, admission must be clear, unambiguous, unconditional and unequivocal. As held by this Court in ***State Bank of India Vs. Midland Industries***, **AIR 1988 Del. 153**, that a judgment on admission by the defendant under Order XII, Rule 6 CPC is not a

matter of right and rather is a matter of discretion of the Court, no doubt such discretion has to be judicially exercised. If a case involves questions which cannot be conveniently disposed of on a motion under this Rule the Court is free to refuse exercising discretion in favour of the party invoking it. It is not in each case where Order XII Rule 6 CPC is invoked that the Court would be obliged to pass a decree which case would depend upon its own peculiar facts. Where the defendants have raised objections which go to the very root of the case, it would not be proper to exercise this discretion and pass a decree in favour of the plaintiff.

44. We may also refer to the decision of a Division Bench of this Court in ***Parivar Seva Sansthan Vs. Veena Kalra*****, AIR 2000 Del. 349** wherein the scope and object of Order XII Rule 6 was explained as under:-

> *"*6. ..... it confers very wide powers on the court, to pronounce judgment on admission at any stage of the proceedings. The admission may have been made either in pleadings, or otherwise. The admission may have been made orally or in writing. The Court can act on such admission, either on an application of any party or on its own motion without determining the other questions. This provision is discretionary, which has to be exercised on well established principles. Admission must be clear and unequivocal: it must be taken as a whole and it is not permissible to rely on a part of the admission ignoring the other part; even a constructive admission firmly made can be made the basis.*"*

45. Reiterating the principle that the admission on which a judgment can be claimed must be clear and unequivocal one, it was held by the Supreme Court in ***Uttam Singh Duggal's Case*** *(supra)*:

> "Where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, plaintiff is entitled. A court should not unduly narrow down the meaning of this rule. Where party has made a plain admission entitling the former to succeed, it should apply. It will also apply where there is a clear admission of facts, in the face of which it is impossible for the party making such admission succeed."

46. Further, as held in ***Jeevan Diesels and Electricals Ltd*** v ***Jasbir Singh Chadha,*** (**2010) 6 SCC 601** whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. The question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent.

47. As could be seen from the ratio laid down in the above noticed decisions, a judgment can be passed under Order XII Rule 6 of CPC even on constructive admissions made by the other party. However, it is only on unequivocal admission.

48. In the instant case, it is no doubt true that the Patent Attorney of the plaintiff himself in his affidavit filed before the COP stated that certain information in relation to corresponding foreign applications was omitted while filing the information as required under Section 8 of the Patents Act. However, it is not as if there was total failure on the part of the plaintiff to disclose the information in terms of the undertaking filed under Section 8(1)(b). The omission was only to furnish a part of the information for the

reasons stated therein. It is also the specific case of the plaintiff that the information so omitted is not material to the grant of the patent in question.

49. Under the circumstances, as rightly held by the learned Single Judge revocation is not automatic under Section 64(1)(m), but it is always open to the Court to examine the question whether the omission to furnish the information was deliberate or intentional. The revocation would follow only if the Court is of the view that the omission to furnish the information was deliberate. Therefore, it cannot be held that there is any unequivocal admission by the plaintiff and consequently, it is not a matter for granting a decree even before the evidence is let in by the parties as provided under Order XII Rule 6 of CPC.

50. For the aforesaid reasons, we are of the view that the learned Single Judge is fully justified in dismissing the application of the defendants under Order XII Rule 6 of CPC. The order under appeal does not suffer from any infirmity and, therefore, the appeal shall stand dismissed.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW,J

NOVEMBER 07, 2014
'anb'/pmc