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

Reserved on : 17th November, 2025
Pronounced on :16th January, 2026

\+ FAO(OS) (COMM) 64/2024

VISHAL CHOUDHARY .....Appellant

Through: Mr. Adarsh Ramanujan, Mr. P.D.V. Srikar, Mr. Samik Mukherjee and Ms. Divyanshi Bansal, Advocates.

versus

SNPC MACHINES PRIVATE LIMITED & ORS. .....Respondents

Through: Mr. Anirudh Bakhru, Mr. Prakhar Singh, Ms. Nippur Sharma and Mr. Vihav Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

***Per* DINESH MEHTA, J.**

1. Instant appeal preferred under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 *(hereinafter referred to as 'CPC')* read with Section 13 of Commercial Courts Act, 2015, impugns the order dated 05.03.2024 passed in I.A. 11490/2023, whereby the application under Order XXXIX Rules 1 & 2 of the CPC, filed by the respondents-SNPC Machines Pvt. Ltd. (*hereinafter referred to as the 'plaintiff' or 'SNPC'*) was allowed and the appellant (*hereinafter referred to as 'Vishal Chaudhary' or the 'defendant'*) was injuncted or restrained from using, making, manufacturing and selling subject brick-making machines *qua* which the plaintiff is having patents.

2. The facts germane to the present appeal are that the plaintiff (SNPC) is engaged in manufacture and sale of mobile brick-making machines *qua* which it holds four patents bearing Nos.353483, 359114, 374814 & 385845.

3. The plaintiff (respondent herein) filed a suit for permanent injunction alongwith the above referred application for temporary injunction claiming that it had developed a mobile brick-making machine, which has done away with traditional way of brick-making in which the raw bricks after being taken out from the moulds were laid on the ground for drying involving a lot of manual labour. The machines developed by SNPC have a different mechanism according to which the machines themselves work on the ground and spread the raw bricks in such a way that human labour in handling the bricks is eliminated. According to the plaintiff, the invention has revolutionised the process of brick-making in the world.

4. The respondent-plaintiff claimed that earlier, it was engaged in the business of brick-making by conventional method, which was labour-intensive and time-consuming and thereafter conceptualised and developed automated brick-making machine and created various prototypes of such machine in relation whereof the above referred patents were granted and after said process, (which continued between 2007 and 2014), the company was incorporated.

5. The respondent-SNPC applied for and was granted the above referred four patents. It also got its technical literature, data-sheet, specification, drawings, images etc. registered under the provisions of the Copyright Act, 1957. The plaintiff claimed in the suit that it is a leading player in the field of brick-making and its machines are exported to various countries, including Nepal, Pakistan, Afghanistan, Saudi Arabia etc.

6. Learned Single Judge heard the temporary injunction application and granted injunction in favour of the respondent vide his order under challenge.

7. Before proceeding to make submission on merits of the case, learned counsel for the appellant submitted that the High Court of Delhi lacks territorial jurisdiction to entertain the subject suit and temporary injunction application inasmuch as no cause of action has taken place within the precincts of this Court. He contended that appellant-defendant has no business in Delhi and his entire operations are situate in Haridwar.

8. He also submitted that no product has been sold by the defendant within the territorial jurisdiction of this Court and the single offer of sale to one Mr. Sumit Dhariwal (which has been stage-managed for maintaining the suit in Delhi High Court) is also a trap-sale. He argued that simply a listing of its product on the website IndiaMart.com or on any other website cannot be a ground for maintaining a suit in Delhi.

9. It was vehemently argued that despite the fundamental question of jurisdiction which was raised by the appellant-defendant, learned Single Judge has proceeded to decide the temporary injunction application while practically sidetracking such issue and deciding the same in a cursory manner.

10. Adverting to the submissions on merit, learned counsel for the appellant argued that the learned Single Judge has failed to apply correct principles and law on the subject and that he was swayed by the fact that the appellant's machine also had mobility regardless of the fact that the mobility was due to kinetic energy.

11. He submitted that during the course of arguments, the appellant had pointed out significant differences in the machines produced by the appellant vis-à-vis the machines being produced and sold by the respondent-plaintiff, yet learned Single Judge has injuncted the appellant from

manufacturing and selling its machines, which were being sold by him for the last couple of years.

12. Learned counsel for the appellant submitted that the appellant has undertaken extensive research for 20 years and developed an indigenous machine entirely different from the machine manufactured and sold by respondent-SNPC, which has following features:

> *"1. A mobile brick-making machine comprising:*
>
> *a chassis (102) to support various parts and aggregates of the machine;*
>
> *a cabin (101) for an operator of the machine to sit and operate the machine, the cabin having various controls for the operator to drive the machine and control brick making operation;*
>
> *a pair of steered front wheels (122) and a pair of non-steered rear wheels (113) mounted on the chassis (102) through their respective axles (304, 303), one of the pair of the front wheels (122) and the pair of rear wheels (113) driven by a moving motor (121);*
>
> *a raw material stock compartment (106) to hold raw material for making bricks;*
>
> *a roller and die assembly comprising:*
>
> *a roller wheel (119); and*
>
> *a die (115) made up of a plurality of circumferentially arranged brick frames (502), the plurality of circumferentially arranged brick frames concentrically fixed to the roller wheel (119);*
>
> *wherein the roller and die assembly is configured to rotate as the mobile brick- making machine moves ahead; and wherein the plurality of brick frames (502) receive the raw material from the raw material stock (106), mould the bricks and lay them on ground as the machine moves ahead, thereby laying a line of moulded bricks on ground.*
>
> *2. The mobile brick-making machine as claimed in claim 1, wherein the roller wheel (119) and die assembly (115) is configured for upward and downward movement relative to the chassis (102), wherein in a lowered position the roller (119) rests on ground.*

3. The mobile brick-making machine as claimed in claim 2, wherein diameter of the roller wheel (D,) is larger than diameter of the die (D) to keep the brick frames at level higher than the ground when the roller wheel (119) is lowered to the ground, and wherein the brick frames (502) being at level higher than ground enables ejection of the moulded bricks to the ground

4. The mobile brick-making machine as claimed in claim 1, wherein each of the plurality of brick frames (502) includes a piston (503) configured to piston moulded brick from the brick frame when the brick frame reaches lowest point during rotation of the roller (119);

5. The mobile brick-making machine as claimed in claim 4, wherein the pistons (503) are driven by a fixed cam (602), wherein the cam pushes the pistons (503) through respective rollers (119) fixed to the pistons as the brick frame (502) rotates along with the roller wheel relative to the fixed cam, to move the corresponding piston (503) to eject the moulded brick out of the brick frame.

6. The mobile brick-making machine as claimed in claim 1, wherein the machine further comprises an arrangement to distribute sand on die frames (502) before the die (115) is filled with raw material over the die frame before filling the raw material on the die frame, wherein the sand is stored in a sand stock compartment (107).

7. The mobile brick making machine as claimed in claim 2, wherein the machine includes a hydraulic power pack (104) to meet hydraulic oil requirement of two hydraulic cylinders; the two hydraulic cylinders comprising a hydraulic lift cylinder (120) used to lower and raise the roller (119) and die assembly (115), and other hydraulic cylinder used to steer the front wheels (122).”

13. Learned counsel for the appellant, at the outset, submitted that while deciding the application for temporary injunction, learned Single Judge has dealt with design and specification of only one brick-making machine manufactured by the respondent-plaintiff (covered by the patent No.359114) and has granted injunction qua all the machines covered by patent Nos.353483, 359114, 374814 & 385845.

14. Without prejudice to his aforesaid contention, he argued that even if the respondent's brick-making machine covered by patent No.359114 is compared with brick-making machine which is being manufactured and sold by the appellant in the name and style of 'Padma', there is a sea of difference not only in the looks but also in design, functioning and process of manufacturing the bricks.

15. While inviting Court's attention towards the drawings of plaintiff's machine *vis-a-vis* the appellant's machine, the process of manufacture and the general claims of the patent, learned counsel for the appellant argued that simply because the appellant's machine is also known as mobile brick-making machine, appellant cannot be restrained from manufacturing and selling its machine, because both the machines are clearly distinguishable in their mode of working and potential customers.

16. Learned counsel submitted that if the product of the appellant is compared vis-à-vis the product of the plaintiff, it is apparent that both the products are entirely different in functionality, so also in design and use of technology. He further submitted that simply because roller is used to produce bricks and the raw-material is filled in stock compartments similar to SNPC's product, it cannot be said that the appellant has copied the manufacturing process and the design of the respondent's product.

17. He submitted that the appellant's machine cannot move independently and it has to be connected to a tractor or any similar vehicle to move forward or backward, whereas the respondent's machine itself is independently movable and the process of manufacturing is controlled and governed from the cabin, in which the driver can sit and control all the processes of brick manufacturing. He further submitted that while the plaintiff's machine works on electrical energy and moves by such energy,

the appellant's machine propels through kinetic energy, which energy is generated by force of pulling or pushing by a tractor, when attached with it.

18. He pointed out that the process of manufacturing of the bricks in appellant's case has to be done and controlled manually and argued that simply because the raw-material placed in the raw material compartment comes to the roller and then to the different dies which takes shape of the bricks, a feature somewhat similar to that of the respondent's machine, it cannot be said that the appellant has copied or infringed the plaintiff's patent, as the roller is somewhat identical.

19. While pointing out that the appellant has different rollers, with two assembly lines, three assembly lines or four assembly lines, which can lay bricks on the ground while moving alongwith the tractor attached to it, learned counsel for the appellant submitted that the plaintiff's machine has only one type of roller, which keeps on rolling and during movement lays or arranges the bricks manufactured on the ground. Learned counsel further added that there is nothing inventive in keeping the raw material in a compartment or hopper and filling the same in multiple dies, fixed on a roller and thus, manufacturing the bricks.

20. Learned counsel for the appellant vehemently argued that in order to see whether any violation of patent has taken place, the Court is not supposed to look at the end product or finished goods rather it has to compare the machinery as a whole. He submitted that in order to find as to whether any patent right has been violated, the Court is supposed to see the process, which has been given in the application for grant of patent. He emphasised that if the process, which is patented by the competent authority alone is compared with the machine of the appellant, it is apparent that there is no breach of the patent of plaintiff's product.

21. He argued that to ascertain as to whether rights of a patentee have been infringed, product mapping is to be taken into consideration and not the superficial and cursory comparison of the entire process.

22. He further submitted that the Doctrine of Equivalents requires the plaintiff to satisfy the triple test known as function-Way-Result test (FWR Test), according to which, the plaintiff is required to prove that the product of the defendant performs substantially the same function in substantially the same way to achieve substantially the same result. He argued that learned Single Judge has granted injunction by way of impugned order simply being influenced by the fact that the product of the appellant has given substantially the same result i.e. manufacturing of bricks.

23. It was argued that the respondent's patented product has a cabin with front steering wheel, which controls the front wheels so also the rear wheels on which a chassis is fixed on which the roller and the raw-material compartment are fixed, whereas the appellant's product simply has a raw-material compartment and somewhat similar roller, parts of which are fixed on a chassis, which can be attached to a tractor as a trolley for the purpose of movement. It was submitted that the appellant's product neither has a cabin nor has front wheels nor does it have any control of the process of manufacturing from the cabin, which the respondent's product has.

24. Learned counsel argued that learned Single Judge has failed to apply ‘all elements rule,’ which means that the defendant's product must contain every element of claim of the suit patent. And if even a single element is missing, it cannot be concluded that there is an infringement.

25. He further argued that learned Single Judge has applied Pith and Marrow Doctrine and has held that as there is mobility in the appellant's machine, it has infringed the SNPC's patent. He argued with vehemence that

Pith and Marrow Doctrine is an old and obsolete test, which is now changed to all elements rule.

26. The contention of learned counsel for the appellant has been that since India has a statute in relation to patents, being the Patent Act, 1970 (hereinafter referred to as the 'Act of 1970'), rights of the parties and infringement (if any) has to be determined in the backdrop of the statutory provisions. He submitted that as per Section 10 of the Act of 1970, a patentee is required to give complete specification of the product and learned Single Judge was supposed to compare the appellant's product vis-à-vis the specifications given by the patentee or the claim of the plaintiff while applying for grant of patent.

27. Court's attention was drawn towards Section 48 of the Act of 1970 to substantiate the contention that the product of the appellant if compared with the specification given by the respondent-plaintiffs, shows significant differences. He argued that since there are a lot of difference between the two, learned Single Judge was not justified in allowing the application for temporary injunction filed by the respondent.

28. Mr. Ramanujan argued that by way of counter-claim, the appellant has challenged the patent granted to the respondent, but while deciding the application for temporary injunction, learned Single Judge has not considered such challenge at all and has granted temporary injunction.

29. He further submitted that learned Single Judge has neither properly considered the aspect of prima facie case nor has he dilated upon the issues of balance of convenience and irreparable loss and injury. He submitted that as a consequence of the impugned order, the appellant's business has come to a screeching halt and argued that even if the learned Single Judge was of the view that the respondent-plaintiff had a prima facie case, without

recording a finding about the balance of convenience and irreparable loss and injury, the injunction as granted ought not to have been granted.

30. While asserting that the balance of convenience entirely lay in favour of the defendant-appellant, learned counsel argued that the learned Single Judge could have put the defendant to some conditions such as furnishing undertaking and directing it to submit details of products sold during the pendency of the suit, and allowed it to continue the manufacture and operate, as the final decision of the suit is likely to take years. He argued that for the last four years, the appellant has also created his own market and his product has served the need of small manufacturer and created its own identity. He expressed concern that if the suit is ultimately dismissed, then, the pecuniary loss and loss of goodwill, which the appellant would suffer can neither be measured in terms of money nor can it be recouped or compensated in any manner.

31. While arguing that learned Single Judge has only applied pith and marrow test over the now prevailing all elements rule, learned counsel argued that approach of learned Single Judge is erroneous for the following reasons:

(i) the patentee had informed the public as to what is monopoly and what is not. And because of applying pith and marrow test, such public notice has been rendered redundant.

(ii) Non consideration of all elements rule mitigates against the provisions of Sections 10(4) (c) and 48 of the Act of 1970.

(iii) taking recourse to pith and marrow test in place of all elements rule amounts to enlargement of monopoly rights granted under the Act of 1970 and if such approach is permitted to be applied, a patentee would always use narrow claim language while applying for patents

and expand its meaning to suit his commercial interest, as and when he alleges infringement of his patent.

32. Learned counsel for the appellant argued that mobility of brick-making machine was not the only objective of the plaintiff's invention and in contrast to the mobility, the essential feature i.e. integrated machine being capable of single person operation to reduce labour was also the objective of the patent. He contended that appellant's brick making machine does not achieve this essential feature – single person operation to so as to reduce the man-power, hence the injunction ought not to have been granted.

33. He further argued that even if the mobility is taken to be the objective, the appellant's product is *per-se* not mobile – it is only capable of being moved by attaching it to a tractor.

34. Mr. Anirudh Bakhru, learned counsel for the respondent-plaintiff, on the other hand, raised a preliminary objection that the present appeal against the order granting temporary injunction is not maintainable and this Court should not consider the validity and correctness of the order in its appellate jurisdiction. In this regard, he relied on the following judgments:

(i) **Wander Ltd. And Anr. v. Antox India Pvt. Ltd.**, 1990 (Supp). SCC 727.

(ii) **Ramakant Ambalal Choksi vs. Harish Ambalal Choksi and Ors**.(2024) 11 SCC 351, Para 26

35. Learned counsel for respondent-plaintiff also submitted that pith and marrow test has not been done away with by the courts of law in India and it is still a golden principle. He argued that learned Single Judge has dealt with all the judgments on the relevant point(s) and has culled out the principles emerging from various judgments on the point, as elucidated in para 33 of the judgment under challenge.

36. He argued that whether the principle of pith and marrow is to be applied or the all elements rule is to be applied or whether anyone of these principles has been wrongly applied, cannot be decided at this juncture, when an appeal against grant of temporary injunction application is sought to be argued. He added that which principle is to be applied can be considered only once the evidence has been led and case has been finally decided.

37. He emphatically argued that a non-essential or trifling variation or addition in the product would not be germane to the substance of the invention and when the basic concept of mobility of the brick-making machine has been copied, the Court is justified in granting injunction. He further argued that the essence of the plaintiff's product is, the use of roller or rotator in which die assemblies are fixed and such dies are automatically filled with the raw-material dropping from the raw-material compartment or the hopper and the machine simultaneously keeps on moving while the dies are so filled, and continues to lay the bricks on the ground.

38. He submitted that pith and marrow test has been enunciated in the case of **FMC Corporation &Ors. v. Natco Pharma Ltd.** (2022)SCC OnLine Del 4249, wherein the Division Bench has dealt with all the judgments on the subject and has concurred with the view of the learned Single Judge and held that even if the Natco process design does not literally infringe the suit patent, it may be found to infringe it on the bedrock of 'equivalence'. He argued that in the Natco case, the High Court rejected the contention of the defendant that element to element test must be applied while also holding that use of a different reagent and completely different sequence of reactions in the Natco process cannot be termed as a minor or in substantial variation.

39. It was fervently argued by Mr. Anirudh Bakhru that the appellant's contention that there are other players in the field, who are manufacturing somewhat similar products and it is not just the appellant alone, who is offering for sale mobile brick making machine to be proceeded against is untenable in law, because third-party infringement has never been a consideration in an intellectual property related dispute.

40. On court's query, learned counsel for the appellant had produced a video of the appellant's machine showing its functioning and process of producing bricks, whereas learned counsel for the respondent-patentee submitted that he does not have a video showing the operation of the machine and how the bricks are manufactured. The Court was therefore constrained to confine consideration of the case on the basis of photographs, maps and the process as indicated in the patent application.

41. Mr. Ramanujan, learned counsel for the appellant, in rejoinder submitted that there cannot be a comparison of the plaintiff's product versus defendant's product and it should always be the defendant's product vis-à-vis the claim filed by the plaintiff. He further submitted that the plaintiff's claim clearly stipulates that its product can be driven and the machine can be controlled by an operator sitting in the cabin and that its operation can also be controlled while sitting in the cabin, whereas neither the cabin nor such facility is available in the appellant's product.

42. He added that in the appellant's product, rear wheels are driven by a moving motor, whereas in the respondent's product, it is the tractor which makes the rear wheels move. While asserting that the tractor which is to be attached with the machine cannot be taken as front wheel, he argued that the contention of the plaintiff has a result of expanding the statutory monopoly beyond the terms of the claim. He also argued that while deciding any patent

claim, the Court has to bear in mind that the law abhors monopoly and patent is its exception.

43. He submitted that if the patent law is the exception to the general law, right of a patentee has to be adjudicated within the framework of what had been claimed in the patent application and the claim cannot be elastic so as to expand it to suit the patentee's commercial interests.

44. In relation to the perversity of the findings recorded by learned Single Judge, at the cost of repetition he argued that, if the principle of law has not been applied properly, the judgment is perverse. He added that since the learned Single Judge has not considered the Division Bench judgment in the case of **Natco Pharma Ltd.*(supra)***and ***Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy, (2010) 42 PTC 361 (Del),*** the findings recorded by learned Single Judge are perverse.

45. Heard learned counsel for the parties.

46. So far as question of jurisdiction is concerned, we are not much convinced with the argument of learned counsel for the appellant that the territorial jurisdiction has been created by a ‘trap sale’, for which, a quotation has been made a basis for invoking jurisdiction of the courts at Delhi.

47. According to us, an offer of sale or supply may or may not ultimately fructify, but when it comes to case of infringement of patent, the fact that a person or dealer has expressed his interest or willingness to sell or supply his goods in territorial jurisdiction of Delhi and if in such process, he has given quotation to a person situated in Delhi, such fact may be taken to be a basic for maintaining an injunction suit in Delhi, as long as the remedy claimed is only injunction.

48. It may perhaps not be true, when damages consequent to the transaction having taken place or when other reliefs revolving around the transaction is claimed. Because, determination of damages may require an actual act of sale or actual transaction in the precincts of Delhi, consequent whereof the plaintiff claims to have suffered the injury.

49. In our opinion, for the purpose of maintaining a suit for injunction, the probability; preparedness or even potentiality of the goods being sold or offered for sale in Delhi may be a ground enough to maintain a suit for injunction in Delhi. The reason for having such opinion is that the injunction is, always a proscriptive or prohibitive relief, for which an actual, confirmed or concluded transaction is not necessary.

50. While dealing with the contentions raised by the rival counsel, we would remain cognizant of the aspect that the order impugned before us is one passed by learned Single Judge while deciding the application for an interim injunction filed by the respondent under Order XXXIX Rules 1 and 2 CPC, which relief is discretionary in nature and that the scope of interference by the Division Bench while hearing intra-court appeal there against is very limited.

51. The Division Bench while hearing such an appeal should interfere only when the finding recorded by learned Single Judge is *ex-facie* perverse and the view that has been taken by learned Single Judge is one, which could not have been taken. According to us, the view of learned Single Judge is a possible and reasonable view, which may or may not be a correct view in ultimate analysis after the evidence is led and suit is finally decided.

52. Adverting to the other moot question, which learned counsel for the appellant, has canvassed before us; viz. the learned Single Judge has applied pith and marrow principle rather than applying all elements rule is

concerned, we find that the judgements on this subject are numerous and diverse. At the stage of hearing an intra-court appeal against decision of injunction application, we would not like to go into the intricate question of applicability of these principle or one of the applicable tests, because any observation or finding recorded by us, at this stage, may affect right of either of the parties, when the suit is finally tried.

53. But so far as the basic plank of argument that the learned Single Judge ought to have compared the claim made or process mentioned in the application for patent vis-à-vis the process of manufacture or functions of the appellant's product is concerned, we are of the view that the plaintiff's patent is necessarily meant for the process of manufacture of brick in such a way that instead of applying manual labour for filling the die with the raw material and then collecting the already manufactured raw bricks and spreading or laying them on the ground manually.

54. In the process invented by the plaintiff, most of the work is done by mechanical process. The machine itself moves on the ground, so as to ensure that the labour and effort and consequent deterioration of quality from manual handling of the bricks is avoided and the machine itself is made mobile by the mechanical process, so as to save time and manual labour. The mobility of the machine, according to us, is the essence of the invention and if someone has changed the mobility by any improvement, development or even using other way or other mode of moving the machine from one point to other point, it may amount to intruding the patent rights of the patentee.

55. Simply speaking, in the instant case, the invention of the respondent-patentee is the very movability or mobility of the machine, which manufactures bricks in such a way that the dies are fixed on a roller or rotating wheel, and the raw material is filled in the hopper or storage tank

and that roller keeps on moving on the chassis, on which the rotator or roller having dies is fixed. If the appellant has made the similar chassis having dies, hopper, roller affixed on a chassis, making it move by attaching a tractor in place of the chassis being permanently fixed to a truck or vehicle, the use of vehicle becomes inconsequential if not redundant.

56. To test the appellant's argument, we can take an imaginary situation, where somebody uses bullocks (as used in bullock cart) in place of the tractor as is being used by the appellant, will it not be a violation infringement of the appellant's invention? Similarly, let us take a reverse position. Had the invention of the appellant been patented and the respondent or someone else being influenced or guided by the appellant's invention, develops a brick making machine fixed on a chassis and with all or some of the improvements, would it not concern the appellant or would such improvement not infringe or transgress the appellant's patent rights?

57. Bearing above observations in mind, if we look at the order passed by the learned Single Judge, we find that in paragraphs 39 to 41 the learned Single Judge has aptly noticed the differences between the plaintiff's product and the defendant's product and their impact. All the following four differences have been found to be integral parts of the same fundamental rule, i.e., the mobility and the mechanism to ensure mobility of the assembly. It will not be out of place to reproduce paras 39 to 41 of the order under consideration, which read thus:

> *"39. The issues on which defendant claimed difference was:*
>
> *a) Lack of a cabin which was integrated to the assembly and used as anoperating and controlling place;*
>
> *b) No steering;*
>
> *c) No steered front wheels;*

d) Rear wheels not driven by motor.

40. At first blush, it would seem that these are differences which would secure the defendant from an infringement action; however, if one looks closely at the differences cited, all the four differences are really parts of the same fundamental issue, i.e., the mobility and the mechanism to ensure mobility of the assembly. The plaintiffs' invention had an integrated cabin which would make the assembly mobile whereas defendant's machine required to be hooked up to a tractor or any mobile vehicle. All aspects such as cabin, steering, steered front wheels and the operation of the rare wheels was all completely relatable to the issue of mobility of the assembly.

41. For appreciating the dispute, it is important to assess as to what really is the invention and pith and marrow of the invention. The pith and marrow of the invention is really the assembly which ensures brick making through mobility. It is not the defendant's case that the brick making machine was a stationery brick making machine and did not require mobility at all. In fact, "the defendant's machine necessarily required to be hooked up to a mobile automative vehicle in order to ensure its operation. The fundamental aspect of these machines was of ensuring that the system of brick making was integrated on to one frame /chassis right from the hopper containing the raw material for bricks to the feeder into the roller and die assembly and then through the circumferential motion the ejectment of the moulded brick on the ground. Without mobility defendant's machine would serve no purpose considering it had a roller and die mechanism as well."

58. A simple look at the aforequoted paras of the judgment shows that the learned Single Judge has dealt with even the differences pointed out by the appellant and their effect. Simply because the appellant feels that the learned Single Judge has not applied the correct principle as per the dictum of **Natco Pharma Ltd.** ***(supra)***, the order cannot be upturned and the injunction granted cannot be reversed.

59. We are of the view that if an injunction as prayed were not granted, it would have seriously infringed the plaintiff's patent rights and its goodwill. In absence of injunction, the consequential loss or damage cannot be measured in terms of money and in case suit is ultimately dismissed, the

appellant-defendant can be compensated in terms of money based upon his turnover of previous years and the evidence to be led by the appellant-defendant in this regard.

60. Keeping the foregoing discussion in mind, we refrain from making further observation or dilate upon the facts of the present case *vis-à-vis* applicability of the tests and principles, so that rights of either of the parties are not prejudiced.

61. We leave the issue here itself, while clarifying that any observation made by us may not be construed to be a finding or binding observation on the merit of the case. In other words, we dismiss the instant appeal, leaving the parties to bear their own cost.

62. The appeal stands disposed of accordingly.

DINESH MEHTA
(JUDGE)

VIMAL KUMAR YADAV
(JUDGE)

JANUARY 16, 2026/ck