



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: May, 08, 2025

Pronounced on: July 01, 2025

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CS(COMM) 1222/2018

COMMUNICATION COMPONENTS ANTENNA INC.

.....Plaintiff

Through: Mr. J. Sai Deepak, Sr. Adv. with
Mr. Mohit Goel, Mr. Sidhant Goel,
Mr. Deepankar Mishra, Mr. Aditya
Goel and Mr. Avinash K. Sharma,
Advs.

Versus

ACE TECHNOLOGIES CORP. AND ORS.Defendants

Through: Mr. Suraj Kumar. Singh, Mr.
Bharat Sing and Mr. Abhay Singh,
Advs.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

**I.A. 36658/2024-By plaintiff for direction to defendants to deposit
Bank Guarantee**

Brief facts:

1. The plaintiff has instituted the present suit seeking permanent injunction restraining the defendants from infringing upon its Indian Patent No.240893.
2. The plaintiff, Communication Components Antenna Inc, is a private company incorporated under the laws of Canada with its principal place of business at 11 Hines Road, Ottawa, Ontario, Canada K2K2K1. The plaintiff is providing cellular base station products, and its innovative



products are designed to allow cellular service providers to get the most out of their cellular base station investments.

3. The plaintiff's product groups include Antennas, Amplifiers, Low Loss Combiners, Tower Mounted Amplifiers (TMA) & Diplexers, Distributed Antenna System (DAS) Components and Portable Passive Intermodulation (PIM) Testers.

4. The defendant no.1, M/s. Ace Technology Corporation is a South Korean company, which is also in the business of manufacturing and selling antennas for the telecommunication industry. The defendant no.2, M/s. Shin Ah Ltd., is a Hong Kong based company, and the defendant nos.3 and 4 are Indian subsidiaries of the defendant no.1.

5. The plaintiff had also filed an application being I.A. 1522/2018 under *Order XXXIX rules 1 and 2* read with *Section 151* of the Code of the Civil Procedure, 1908¹ in the present suit seeking an *ad interim* injunction restraining the defendants from infringing Indian Patent no.240893 of the plaintiff, which has since been disposed of *vide* order dated 12.07.2019 holding as under:-

“80. The Defendants have placed on record, the purchase orders for the various models of its antennae. Owing to the fact that the Defendant No.1 which is the manufacturer and seller claims to not have any assets in India, and in view of the discussion above, where the Defendants are clearly infringing the Plaintiff's patent, the Defendants are liable to deposit some amounts in the Court in order to continue the sales of these antennae in India. The total value of the exports made till date, as per the disclosures made by the Defendants, is as follows:

¹Hereinafter referred to as “CPC”



S. No.	Antenna	Quantity	Amount	Date
1.	XXDW-18-33i-iVT-DB8P	67,627 units	\$64,405,583	Between October, 2016 and October, 2018
2.	XXDW-18-33i-iVT-DB8P-V2	10,000 units	\$8,380,000	18 th December, 2018
3.	XXDW-18-33i-iVT-DB8P-V2	5,000 units	\$3,930,000	22 nd February, 2019
4.	XXDGL-15-33i-iVT-DB-4P	15,000 units	\$9,525,000	2 nd May, 2019
	Total	97,627 units	\$86,240,583	

81. Insofar as the sales made prior to date of suit to the tune of \$64,405,583, which, at the current rate of exchange (1 USD = approx. Rs.68) comes to Rs.437,95,79,644/- the Defendants are directed to give a Bank Guarantee for a sum of Rs.40 crores, which is approximately ten percent of the above amount.

82. Insofar as the sales made during the pendency of the suit are concerned, the total sales are to the tune of \$21,835,000, which come to Rs.148,47,80,000/-, ten percent of which is approximately Rs.14.5 crores. The Defendants are directed to deposit the Bank Guarantee and the said sum with the Registrar General of this Court, within one month from date of judgment. If the Defendants do not comply with the above directions within one month, the Defendants shall stand restrained from manufacturing, selling, offering for sale any models of antennae which infringe suit patent number IN 240893.

[Emphasis supplied]

6. In fact, the defendants challenged the order dated 12.07.2019 before a Division Bench of this Court vide FAO(OS)(COMM) 186/2019 entitled ***Ace Technologies Corp. & Ors. vs Communication Components Antenna Inc.*** wherein the defendants have filed an application being CM APPL. 35213/2019 seeking stay of the operation of the order dated 12.07.2019. The Division Bench of this Court refused to tamper with the order dated 12.07.2019, vide order dated 08.08.2019, stating as under:-



“At the same time, we are conscious of the fact that the interest of the respondent/plaintiff in respect of the suit patent needs to be protected during the pendency of the suit, more so when the impugned order notes that the appellant no.1/ defendant no.1 and the appellant no.2/ defendant no.2 are companies based in South Korea and Hong Kong respectively and admittedly, they do not possess any moveable or immovable assets in India, for securing the interests of the respondent/plaintiff.”

[Emphasis supplied]

7. Furthermore, the defendants preferred an appeal before the Hon’ble Supreme Court i.e. SLP(C) 21938/2019 entitled **Communication Components Antenna Inc. vs. Ace Technologies Corp.& Ors.** challenging the order dated 08.08.2019 of the Division Bench of this Court, wherein the Hon’ble Supreme Court vide order dated 20.09.2019 held as under:-

“... there was absolutely no necessity for the Division Bench, by way of an interim order, to interfere with the well-reasoned Single Judge’s order dated 12.07.2019, by which, in the interim, Bank Guarantee of Rs. 40 crores and deposit of Rs. 14.05 crores was ordered. This is especially so, as the respondent-company, being a Korean Company, is not ordinarily subject to our jurisdiction.”

[Emphasis supplied]

8. Thereafter, the Division Bench of this Court, while adjudicating the appeal i.e. FAO(OS)(COMM) 186/2019² in toto, arising *inter se* the same parties out of the present proceedings, vide order dated 10.04.2023, held as under:-

“98. In view of the above, we consider it apposite that the appellants be granted one more opportunity to produce the allegedly offending antenna for examination of a court appointed expert. The appellants may approach the learned Trial Court for the said purpose and for modification/ vacation of the impugned judgment. If the Trial Court considers it apposite, it would pass appropriate orders for appointing an expert for assistance in determining whether the allegedly infringing antennae emit beam patterns similar to the Suit Patent and consider the appellants application for vacation/ modification of the impugned judgment.

²2023:DHC:2479-DB



XXX XXX

100. *The appellant had expressed the difficulty in depositing 10% of the sale proceeds to comply with the terms of the impugned judgment. It is also submitted on their behalf that the said amount is exorbitant. However, it is noticed that the learned Single Judge had examined a royalty agreement entered into between the respondent and another licensee for use of the patent and had apparently, determined the terms based on the said agreement. Therefore, we do not find any reason to modify the same. However, given the difficulty expressed by the appellants, we consider it apposite to modify the impugned judgment to a limited extent of permitting the respondents to deposit a bank guarantee for a sum of 10% of the sale proceeds instead of depositing the same in cash with the Registrar of this Court.*”

[Emphasis supplied]

9. Presently, the suit, *inter se* the parties herein, is at the stage of recording of evidence before the learned Joint Registrar.

10. However, in the interregnum and as per plaintiff, considering that the defendant no.1 has lost more than 64.90% of its share value and the plaintiff has inhibitions that the object of the present *lis* will be defeated, if the defendant no.1 is not ordered to deposit a Bank Guarantee, the plaintiff has preferred the present application under *Section 151* of the CPC seeking a direction to the defendants to deposit a Bank Guarantee in this Court because by the time the present *lis* would reach its conclusion, the defendants would not be in a financial situation to satisfy any decree which may be passed against them by this Court.

Submissions on behalf of the plaintiff:

11. Mr. J. Sai Deepak, learned senior counsel for the plaintiff in support of the present application submitted that since the *primary* contesting defendant, i.e. the defendant no.1's home country is South Korea, which does not share a reciprocal arrangement with India for recognition and



enforcement of decrees under *Section 44A³* of the CPC, if any decree is passed by this Court against the said defendant no.1 would automatically not be enforceable, reliance in this regard is placed upon *Article 217* of the Korean Civil Procedure Act⁴. Further, as per Mr. J. Sai Deepak, it is an

³44A. [Execution of decrees passed by Courts in reciprocating territory]

(1) Where a certified copy of a decree of any of the superior Courts of [* * *] any reciprocating territory has been filed in a District Court, the decree may be executed in [India] [Substituted by Act 2 of 1951, Section 3, for "the States".] as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

[Explanation I.-"Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation II.-"Decree" with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.] [Substituted by Act 71 of 1952, Section 2, for Explanations 1 to 3.]

⁴Article 217 (Recognition of Foreign Country Judgments)

(1) A final and conclusive judgment rendered by a foreign court or a judgment acknowledged to have the same force (hereinafter referred to as "final judgment, etc.") shall be recognized, if all of the following requirements are met: (Amended by Act No. 12587, May 20, 2014)

1. That the international jurisdiction of such foreign court is recognized under the principle of international jurisdiction pursuant to the statutes or treaties of the Republic of Korea;

2. That a defeated defendant is served, by a lawful method, a written complaint or document corresponding thereto, and notification of date or written order allowing him/her sufficient time to defend (excluding cases of service by public notice or similar), or that he/she responds to the lawsuit even without having been served such documents;

3. That the approval of such final judgment, etc. does not undermine sound morals or other social order of the Republic of Korea in light of the contents of such final judgment, etc. and judicial procedures;

4. That mutual guarantee exists, or the requirements for recognition of final judgment, etc. in the Republic of Korea and the foreign country to which the foreign country court belongs are not far off balance and have no actual difference between each other in important points.



admitted position that the defendant no.2 is also a Hong Kong based company and the defendant nos.3 and 4 are Indian subsidiaries of the defendant no.1.

12. Further, Mr. J. Sai Deepak went onto submit that since the plaintiff by leading evidence has been able to show that the damages presently *qua* the defendants, are approximately Rs.1160 Crores (approximately USD 140 Million), which is surmounting and moreover, since the defendants themselves in their affidavit dated 12.11.2024 have stated that the defendants have, a) cash of approximately Rs.5.68 Crores in India; b) depreciating machinery and equipment of about Rs.4 to 5 Crores; and c) a land which is self-assessed to the tune of Rs.18 Crores, the defendants do not have sufficient assets in India to satisfy any decree that may be passed by this Court in respect of the (surmounting) damages of Rs.1160 Crores (approximately USD 140 Million) claimed by the plaintiff.

13. Mr. J. Sai Deepak submitted that while dealing with similar circumstances in ***Communication Components Antenna Inc. vs. Mobi Antenna Technologies (Shenzhen) Co. Ltd. & Ors.***⁵ instituted by the very same plaintiff *qua* the same patent, this Court has already granted a decree for damages in favour of the plaintiff to the tune of Rs.217 Crores. Mr. J. Sai Deepak submitted that, however, since the defendant therein was a China based entity and which is not a reciprocating territory with India, the decree has been rendered as infructuous, leaving the plaintiff with no means of recovery.

⁵2022/DHC/000855



14. Mr. J. Sai Deepak then submitted that since this Court *vide* order dated 12.07.2019, as reproduced hereinabove, *prima facie* found that the defendants are indeed infringing the suit patent, which has also been upheld by the Hon'ble Division Bench of this Court *vide* order dated 10.04.2023. As such, *prima facie*, there being determination of infringement of the suit patent, the present application needs to be allowed.

15. Mr. J. Sai Deepak also submitted that the present application could only be moved under *Section 151* of the CPC and not under *Order XXXVIII Rule 5* of the CPC since the provisions thereof are inapplicable due to the factum that the defendants do not have sufficient assets in India as such, there is no question of there being an apprehension that the defendants will dissipate them. Reliance in this regard was placed upon ***M. Ramachandra Rao vs. Varaprasad Rao***⁶, wherein the Karnataka High Court under similar circumstances held that the Court would not have jurisdiction under *Order XXXVIII Rule 5* of the CPC, but only under *Section 151* of the CPC. Further, reliance was also placed upon ***Nokia Technologies vs. Guangdong Oppo Mobile Telecommunications Corp. Ltd. & Ors.***⁷, wherein this Court directed the defendants to furnish security deposit, which was subsequently upheld by the Hon'ble Supreme Court to secure the ends of justice.

16. In view of the foregoing, Mr. J. Sai Deepak lastly submitted that in the interest of justice for securing the claim of the plaintiff, this Hon'ble Court may be pleased to direct the defendants to furnish a Bank Guarantee

⁶ MANU/KA/0811/1999

⁷2023 SCC Online Del 3841



to the extent of 25% of the total amount as claimed by the plaintiff on the basis of the evidence placed on record as also in view of the factual matrix involved herein.

Submissions on behalf of the defendants:

17. *Per Contra*, Mr. Suraj Kumar Singh, learned counsel for the defendants submitted that defendant no.1's home country recognises and enforces foreign judgments under its domestic law under *Article 217* of the Korean Civil Procedure Act and just because South Korea is not notified as a "reciprocating territory" under *Section 44A* of the CPC, the plaintiff cannot be allowed to seek coercive reliefs against the defendant no.1.

18. Mr. Suraj Kumar Singh submitted that ***Nokia Technologies (supra)*** does not apply to the facts of the present case since the same was/ is relating to Standard Essential Patents and the defendant therein was a prior licensee, however, in the present case, the plaintiff has not yet been able to prove any technical infringement since no claim mapping has been done yet. Furthermore, the defendants herein have already deposited approximately Rs.70 Crores with the Registrar General of this Hon'ble Court, pursuant to the order dated 12.07.2019 passed by this Court.

19. Mr. Suraj Kumar Singh then submitted that reliance by the plaintiff upon the order dated 12.07.2019 of this Court is misplaced since it was passed at a stage when the parties were yet to lead their respective evidence(s). Moreover, in appeal against the order dated 12.07.2019 i.e. FAO(OS)(COMM) 186/2019, the Hon'ble Division Bench of this Court *vide* order dated 10.04.2023, has emphasised the need for expert evidence and further examination before any conclusive finding on infringement



can be made. In fact, prior thereto also, the Hon'ble Supreme Court *vide* order dated 20.09.2019 in SLP(C) 21938/2019, arising between the same parties, never upheld any findings of infringement therein.

20. Mr. Suraj Kumar Singh then submitted that it is only in rare and exceptional cases that interim relief(s) to final relief(s) can be granted, which is not the case herein, particularly since the defendants have a strong *prima facie* case with *balance of convenience* and *irreparable harm* overwhelming in their favour. Reliance in this regard is placed upon ***Deoraj vs State of Maharashtra & Ors***⁸, wherein it is held that such interim relief(s) be granted only if the Court is satisfied that withholding of it would prick its conscience and it would do violence to the sense of justice.

21. Mr. Suraj Kumar Singh also submitted that the defendant no.1 is a South Korea based entity, as such it does not have sufficient assets in India, it's role is limited to manufacturing of antennas in South Korea, which were directly sold to Reliance Jio pursuant to purchase orders and the discontinuation of sale of antennas was due to the lack of further orders from Reliance Jio and therefore the aforesaid situation is not the final condition of the defendants. Also, the evidence lead by the plaintiff for damages to the tune of Rs.1160 Crores (approximately USD 140 Million) is yet to be proved.

22. Mr. Suraj Kumar Singh further submitted that the defendants are in a healthy financial position to satisfy any potential decree that may be passed, which is also evident from the affidavit dated 20.01.2025 of the CFO of the defendant no.1. In any event, the plaintiff has failed to show

⁸ (2004) 4 SCC 697



any real or imminent risk of the defendants fleeing the jurisdiction of this Court to frustrate any potential decree, moreover, the defendants have already deposited more than Rs.70 Crores in pursuance of the interim order which shows *bona-fides* of the defendants. In view thereof, reliance placed by the plaintiff on *Mobi Antenna Technologies (supra)* is misplaced since the facts therein were different from the present one, as the defendant therein had abandoned the suit proceedings.

23. In view thereof, Mr. Suraj Kumar Singh prayed for dismissal of the present application.

Reasonings, discussions and analysis:

24. This Court has heard Mr. J. Sai Deepak, learned senior counsel for the plaintiff as also Mr. Suraj Kumar Singh, learned counsel for the defendants and perused the relevant documents on record as also adverted to the judgments cited by them.

25. Based on the above, the whole issue is revolving around the factum of depositing 25% of the damages by the defendants, as claimed by the plaintiff, to meet the ends of justice under *Section 151⁹* of the CPC, and that too, whence the suit is to be finally adjudicated by this Court.

26. Adjudication of a relief by a Court of law in India is based on the prevalent Statute(s) in India, which are equally applicable for all parties appearing before it. The ‘*Court of Law*’ can be any Forum(s)/ Court(s)/ Judicial Authority(s)/ Presiding Officer(s); the ‘*prevalent Statute(s)*’ can be any Act(s)/ Rule(s)/ Regulation(s)/ Guideline(s); the ‘*parties*’ can be any person/ entity/ concern/ company of any National or International origin.

⁹ *Section 151. Saving of inherent powers of Court-* Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.



However, the applicability of each of the above is/ are dependent upon the facts and circumstances involved and there is no hard and fast rule therefor.

27. Section 151 of the CPC is about “***Saving of inherent powers of Court***” whereby the Court is empowered to pass all such “*necessary*” order(s) as is deemed fit, proper and appropriate for meeting “... *the ends of justice or to prevent abuse of the process of the Court.*” Though, Section 151 of the CPC gives sufficient and wide discretionary powers to the Court to exercise, however, there is no qualm that a general provision of law like Section 151 of the CPC is to be exercised sparingly by the Court, with caution and circumspection. But, at the same time, there is also no qualm that exercising such powers is/ are dependent upon the situation when/ where it is felt appropriate and when/ where the situation so demands, especially, to meet the ends of justice and where it is pricking the conscience of the Court. Also, the other key factors playing major role are where an effected party is *prima facie* able to convince the Court that the *balance of convenience* is heavily tilting in its favour and also that if an appropriate order is not passed in its favour at an appropriate stage then it may/ shall result in causing *irreparable harm, loss and injury* to the party, for which it cannot be compensated financially.

28. No doubt, for exercising its powers under Section 151 of the CPC, the Court may be faced with a situation where granting an interim relief to an effected party may tantamount to granting the final relief itself, however, when faced with such a situation, it will be relevant for the Court to consider if it will be too late when the time comes for granting final relief, no execution will be possible despite decree in its favour. In such a



scenario, for proper dispensation of due justice and to meet the ends of justice, attempt to grant (sufficient) protection to the effected party, the Court should proceed to grant appropriate relief, be it under *Section 151* of the CPC. At that time, under the given circumstances, the Court has to be convinced/ persuaded by the effected party that there is a *prima facie* case made out in its favour wherein the *balance of convenience* lies in its favour and where it may face *irreparable harm, loss and injury*, if an appropriate order is not passed in its favour.

29. Be that as it may, if a situation so arises where there is/ are hardly any choice(s) left for the Court but to follow the rare and exceptional route of exercising the discretionary remedy under *Section 151* of the CPC. Reliance in this regard is placed upon ***Deoraj (supra)*** wherein, the Hon'ble Supreme Court, after being satisfied of it being a foolproof case, granted interim relief and held as under:-

“Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The



conduct of the parties shall also have to be seen and the Court may put the parties on such terms as may be prudent.

The present one is a case where we are fully satisfied that a foolproof case for the grant of interim relief was made out in favour of the petitioner in the High Court on the basis of the material available before the Court.”

30. The Hon’ble Supreme Court in **Rahul S. Shah vs. Jinendra Kumar Gandhi & Ors.**¹⁰ while advertng to the powers of a Court under the provisions of Section 151 of the CPC held as under:-

“....42.All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:

9. In a suit for payment of money, before settlement of issues, the Defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers Under Section 151 Code of Civil Procedure, demand security to ensure satisfaction of any decree....”

[Emphasis supplied]

31. In fact, under such circumstances and to meet the ends of justice, the most effective recourse is the inherent powers under Section 151 of the CPC which enables the Court to pass appropriate orders in situations where no express provision exists to secure the necessary relief. This Court finds able support from **M. Ramachandra Rao (supra)**, wherein the learned Single Judge held as under:-

“...9. The only other source of power that could be thought of is Section 151 Civil Procedure Code. The limits of the exercise of the power under Section 151 Civil Procedure Code, is clearly defined M/s. Ram Chand and Sons Sugar Mills Pvt. Limited v. Kanhaya Lal, 1966(3) SCC 856: MANU/SC/0263/1966: AIR 1966 SC 1899 and the relevant portion reads as follows:

The inherent power of a Court is in addition to and complementary to the powers expressly conferred under the Code. But that power

¹⁰(2021)6 SCC 418



will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions... ”

32. Interestingly, a Division Bench of this Court in **Nokia Technologies (supra)**, while dealing with a suit for infringement of Standard Essential Patent and of which the undersigned was a part, specifically held as under:-

“73. In any event, this Court is of the view that in exercise of its inherent power under Section 151 CPC as an interim measure, it can pass a pro-tem order for balancing the equities with a view to aid a party.

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78. Consequently, a combined result of Section 151, Order XII Rule 6, Order XXXIX Rule 10 CPC is that the Courts have the power to pass orders for deposit of money pending decision in a suit, if the facts so warrant. Section 151 CPC can be called in aid to cover cases which are analogous to these principles but may not be directly covered by the express words in the Code.”

[Emphasis supplied]

33. In fact, a learned Single Judge of this Court, who rendered the judgment dated 12.07.2019 in the present proceedings, in **Rxprism Health Systems Private Limited & Anr. vs. Canva Pty Limited & Ors.**¹¹, in factually similar context involving a forging entity, took into account the aspects of sales figures, revenue generated, current operations in India and the overall financial condition of the defendants/ infringers, while directing deposit of specified amount by way of Bank Guarantee and/ or Fixed Deposit Receipt to secure the interest of the plaintiff/ patent holder therein, holding as under:-

¹¹2023 SCC OnLine Del 4186



“...97. This Court also notices that Defendant 1 is an Australian company and Defendants 2 and 3 are the senior officials in the said company. The defendant has no assets in India and also do not have a physical business in India. Accordingly, considering the revenue and sales figures of the users who have used the "Present and Record" feature in India at least once as per the defendant themselves, till 30-6-2022 Defendant 1 Canva Pty. Ltd. is directed to deposit a sum of Rs 50 lakhs with the Registrar General of this Court, which shall be kept in the form of a FDR, as a security for the plaintiff's claims for past use of the infringing feature in India..”

[Emphasis Supplied]

34. Factually, the present proceedings are, *admittedly*, emanating from and are involving, a private party who is *primarily* the defendant no.1 which is a Korean based entity and the defendant no.2 is also a Hong Kong based company and the defendant nos.3 and 4 are only Indian subsidiaries of the defendant no.1. In fact, in the affidavit dated 12.11.2024, the authorised representative of the defendants has stated as under:-

“Defendant no.3



NO	division	date of acquisition	product name	Book value				Term of dep	Residual value %	the last month of the year	Current month	Current month	Current month	the allowance for depreciation				Balance	
				Beginning	Increase	Decrease	Account Balance							Unutilized	Depreciated	Increase	Decrease	Account Balance	
Machinery TOTAL				1,70,21,376	0	0	1,70,21,376							54,99,719	79,15,039	12,12,778	0	91,27,817	76,93,560
1	Tools	17/03/01	Clamp Assembly Tool	19,02,555			19,02,555	60	5%	82	91	9	18,07,427	18,07,427	0			18,07,427	95,128
2	Tools	17/03/01	Die Casting Tool	71,41,322			71,41,322	60	5%	82	91	9	67,84,256	67,84,256	0			67,84,256	3,57,066
3	Tools	17/03/01	Die Casting Tool - 2	13,36,993			13,36,993	60	5%	82	91	9	12,70,134	12,70,134	0			12,70,134	66,849
4	Tools	17/03/01	Die Casting Tools - 3	11,24,527			11,24,527	60	5%	82	91	9	10,68,300	10,68,300	0			10,68,300	56,228
5	Tools	17/03/01	Fitment Tool	9,78,153			9,78,153	60	5%	82	91	9	9,24,495	9,24,495	0			9,24,495	48,658
6	Tools	17/03/01	Injection Molding Tool	25,51,824			25,51,824	60	5%	82	91	9	24,24,233	24,24,233	0			24,24,233	1,27,591
7	Tools	17/03/01	NCVT Tool	4,19,046			4,19,046	60	5%	82	91	9	3,98,093	3,98,093	0			3,98,093	20,952
8	Tools	17/03/01	Radome Tool	12,97,537			12,97,537	60	5%	82	91	9	12,32,661	12,32,661	0			12,32,661	64,877
9	Tools	18/03/01	Radome Tool	1,88,800			1,88,800	60	5%	70	79	9	1,79,360	1,79,360	0			1,79,360	9,440
10	Tools	18/06/01	Protective Caps	5,30,000			5,30,000	60	5%	67	76	9	5,03,500	5,03,500	0			5,03,500	26,500
11	Tools	18/07/01	Thermal Mould	9,35,000			9,35,000	60	5%	66	75	9	8,88,250	8,88,250	0			8,88,250	46,750
12	Tools	18/07/01	Rubber Mould - OAK	14,159			14,159	60	5%	66	75	9	13,451	13,451	0			13,451	708
13	Tools	18/07/01	Rubber Mould - OAK	16,708			16,708	60	5%	66	75	9	15,873	15,873	0			15,873	835
14	Tools	18/11/01	Rubber Mould - OAK	2,21,225			2,21,225	60	5%	62	71	9	2,10,164	2,10,164	0			2,10,164	11,061
15	Tools	18/12/10	Concoging Antenna - Tooling	84,600			84,600	60	5%	61	70	9	80,370	80,370	0			80,370	4,230
16	Tools	19/02/22	Connector Cover - R&D	6,31,300			6,31,300	60	5%	59	68	9	5,99,735	5,99,735	9,996			5,99,735	31,565
17	Tools	22/07/20	Extrusion Tools sub plateRadome(VION)	2,62,200			2,62,200	60	5%	18	27	9	1,31,087	74,727	37,364			1,12,091	1,50,109
18	Tools	22/12/01	Hard Tool (190*150)	28,18,249			28,18,249	60	5%	13	22	9	10,07,524	5,80,090	4,01,600			9,81,690	18,36,559
19	Tools	22/12/01	Hard Tool (278*168)	33,40,081			33,40,081	60	5%	13	22	9	11,54,079	6,87,500	4,75,562			11,63,462	21,76,619
Tools TOTAL				2,57,89,298	0	0	2,57,89,298						2,07,32,991	1,97,32,622	9,24,922	0	2,06,57,544	51,31,724	
TOTAL				4,56,95,565	0	0	4,56,95,565						2,76,96,997	2,91,87,263	23,43,253	0	3,15,30,516	1,41,65,050	

Defendant no.4

Ace Mechatronics India Private Limited										Current mon: 9				(Unit : INR)					
NO	division	date of acquisition	product name	Book value				Term of dep	Residual value %	the last month of the year	Current elapsed month	Current month	the allowance for depreciation				Balance		
				Beginning	Increase	Decrease	Account Balance						Unutilized	Depreciated	Increase	Decrease		Account Balance	
1	Land	08/12/16	Land	19,44,00,000			19,44,00,000	0	5%	181	190	9		0			0	19,44,00,000	
Land TOTAL				19,44,00,000	0	0	19,44,00,000							0	0			19,44,00,000	
1	Buildings /structure	09/12/01	Factory Building	4,98,80,008			4,98,80,008	240	5%	169	178	9	3,33,67,647	17,76,975				3,51,44,622	1,47,35,386
2	Buildings /structure	09/12/01	structure	10,52,459			10,52,459	240	5%	169	178	9	7,04,051	37,494				7,41,545	3,10,914
Buildings /structure TOTAL				5,09,32,467	0	0	5,09,32,467						3,40,71,698	18,14,469	0			3,58,86,167	1,58,46,300
0	Machinery	10/06/01	Machinery	1,66,24,650			1,66,24,650	120	5%	169	172	9	1,57,93,418	0				1,57,93,418	8,31,233
Machinery TOTAL				1,66,24,650	0	0	1,66,24,650						1,57,93,418	0	0			1,57,93,418	8,31,233
TOTAL				26,19,57,117	0	0	26,19,57,117						4,98,65,116	18,14,469	0			5,16,79,585	21,02,77,532

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35. In effect, the aforesaid affidavit filed on 12.11.2024 clearly reflects that the defendant no.1 has limited assets in India. Additionally, it is also the case of the defendants that they have stopped their operations in India due to no further orders from Reliance Jio.

36. Under such circumstances, this Court finds, barring invoking *Section 151* of the CPC, the plaintiff was left remediless, with no other remedy available to it under law for exercising its rights under the given/ existing factual scenario. Therefore, the plaintiff has rightly exercised its rights to file the present application under *Section 151* of the CPC, which is maintainable in the present form, particularly, whence there is no bar



and/ or impediment therefor. Thus, this is a fit case for this Court to allow the plaintiff to exercise its rights under *Section 151* of the CPC as appropriate orders are called for in the present given scenario and that too, at this stage.

37. Though, *Order XXXVIII Rule 5* of the CPC was/ is another remedy available to the plaintiff, however, the same is of no relevance under the facts and circumstances involved since the invocation thereof was/ is only contingent upon the existence of property belonging to the defendants which was/ is amenable to attachment as the existence of such attachable property is a condition precedent for exercise of jurisdiction under this provision. In the absence of any such property of the defendants capable of being attached available within India, passing of any order under *Order XXXVIII Rule 5* of the CPC would become ineffective and fall outside the ambit of the said provision. Taking into account that there is no substantial property of any of the defendants in India, as also considering that the defendants have no active business in India, *Order XXXVIII Rule 5* of the CPC, having no applicability, cannot come to the aid of the plaintiff.

38. Moreover, as per *Article 217* of the Korean Civil Procedure Act, a decree passed by a Foreign Court shall be enforceable within the Republic of South Korea only upon the satisfaction of the condition of reciprocity. Such reciprocity must be established, *inter alia*, by entering into a bilateral agreement and/ or treaty. In the absence of such reciprocity, a foreign decree shall not be deemed capable of being enforced within the jurisdiction of South Korea. Therefore, only if/ when reciprocity is present in the aforesaid modes/ forms, then only such a decree passed by the India Court(s) will be enforceable in South Korea. There would, thus, be no



sanctity to a decree passed by a Court of Law in India, which, in any event will be liable for scrutiny once again.

39. In view thereof, as also bearing in mind the substantial decline of 65% (approximately) in the valuation of defendant no.1, ends of justice would be adequately met by directing *primarily* the defendant no.1 to deposit 25% of the amount claimed by the plaintiff as damages, more so, since the same is derived on the basis of Rs.1160 Crores (approximately USD 140 Million). Also, in view of the depreciating financial position of defendant no.1 which is, *admittedly*, a foreign (Korean) entity, as also in view of *Article 217* of the Korean Civil Procedure Act and the apprehensions of the plaintiff *qua* inability of the defendants to pay the damages, the aforesaid measure is not only fair and reasonable, but rather practical as well. Taking all these as, unless adequate safeguards are put in place, at this stage, the very purpose/ interest of justice shall be rendered otiose.

40. Also, the factual circumstances involved justify grant of security deposit as an interim arrangement; and that too without entering into an elaborate discourse on merits at this stage. This is, especially, with a view to uphold/ protect the rights of a registered patent holder like the plaintiff; as also to promote a progressive patent regime that incentivizes innovation/ creativity and intellectual advancement. While maintaining a conducive framework for dissemination of knowledge, and keeping in view the object of adjudicatory process to ensure that when/ if the ultimate decree or relief is granted, the same should not become incapable of being enforced and should be in the form of an effective relief, the plaintiff has been able to make out a case in its favour.



41. At this juncture, it is imperative to note that while the exact quantification of damages remains to be adjudicated, this Court, *vide* order dated 12.07.2019, *prima facie* found that the defendants are indeed infringing the suit patent, which has also been upheld by the Hon'ble Division Bench of this Court *vide* order dated 10.04.2023 and which has attained finality. Further, in pursuance to the order dated 12.07.2019 of this Court and also by the Hon'ble Supreme Court *vide* order dated 30.09.2019, the defendant no.1 has cumulatively deposited Rs.70 Crores @ 10% of the revenue generated from sales as a continuing obligation of the proceeds accruing from the infringing use of the plaintiff's patent. Both the aforesaid orders have neither been altered/ modified/ changed and as such are final and binding upon the defendants even as of today.

42. Despite the aforesaid, since it is the case of the defendants that there had been no sales in the preceding year, no deposits had been made before this Court, the same, in addition to the other factors coupled with the continued non-compliance with the directions of this Court, reflect that the financial position of the defendant no.1, is indeed in a precarious state. The apprehension raised by the plaintiff regarding the defendants' inability to satisfy the decree, if ultimately passed, considering the facts and circumstances of the present *lis* will turn into a reality, if appropriate order(s) is/ are not passed, at this stage.

43. Collectively taking all the aforesaid, the plaintiff has been able to convince/ persuade this Court to exercise its inherent powers under *Section 151* of the CPC. As such, this Court is of the view that a *prima facie* case has been made out in favour of the plaintiff and against the defendants with the *balance of convenience* in its favour for grant of an



appropriate relief, at this stage, as the defendants currently do not have any ongoing business operations in India and the absence thereof, indeed undermines and puts at risk the rights/ interests of the plaintiff. Moreover, if the plaintiff's apprehension regarding the defendant's inability to satisfy the decree materializes, great *irreparable harm, loss and injury* is likely to occur against the plaintiff, and the entire objective of the captioned *lis* shall be rendered otiose.

44. Accordingly, in the interest of justice and particularly to secure the interests of the plaintiff during the pendency of the present proceedings, the defendant no.1 is hereby directed to furnish and deposit an amount equivalent to 25% of the damages of Rs.1160 Crores (approximately USD 140 Million) as claimed by the plaintiff i.e. Rs.290 Crores, in addition to all the monies already deposited by the defendant no.1 in pursuance to previous order(s) of the Court(s) from time to time, either by way of a Bank Guarantee issued by a scheduled commercial bank or in the form of a Fixed Deposit Receipt in the name of the Registrar General of this Court within a period of *four weeks* from today.

45. Accordingly, the present application is allowed and disposed of.

SAURABH BANERJEE, J

JULY 01, 2025/So