

Analysis on TVS Motor Company Limited v/s Bajaj Auto Limited (2009) Supreme Court

By Milind.parikh | Views 13583

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Facts:

There were two suits in this case. One was by the plaintiff Bajaj Auto Limited which filed a suit under Section 108 of the Patents Act, 1970 for the relief of permanent injunction in respect of the plaintiff's patent and/or from using the technology/invention described in the said patent and/or manufacturing, marketing, selling, offering for sale or exporting 2/3 wheelers, including the proposed 125-CC FLAME motorcycle containing an internal combustion engine or any internal combustion engine or product which infringes the plaintiff's patent claiming of damages for infringement of patent etc. Pending the said suit, the plaintiff prayed for an order of temporary injunction restraining the respondent from in any manner infringing the applicant's patent.

Plaintiff in another suit, TVS Motor Company filed the suit on the basis of groundless threat of infringement under Section 106 of the Patents Act, for declaring that the threats held out by the defendant that the plaintiff is infringing the defendant's patent and that the defendant is proposing to take infringement action against the plaintiff are unjustified and also for permanent injunction restraining the defendant from continuing the issuance of threats and thereby interfering with the launch and sale of product TVS Flame apart from directing the defendant to compensate the plaintiff by way of damages sustained on account of the unjustified threats made by the plaintiff. Pending the said suit, the plaintiff filed for an order of interim injunction restraining the respondent from interfering with the manufacture and marketing of applicant's products.

Except the use of three valves, the product which was attempted to be marketed by the respondent was prima facie similar to the applicant's patented product.

Issue:

1. Whether the Defendants infringed the patent or combination even though it made some improvements to the main patented article?
2. Whether the patent of the applicant was valid and still subsisting?
3. Whether there were similarities in the design of TVS flame with the patent of Bajaj motors?
4. Whether the grant of the injunction was necessary to protect the rights of the applicant under the statutory provision
5. Whether the respondents were unjustly threatened only for the purpose of obtaining an unjust monopoly over the market?

Contentions:

Appellant:

1. Technology been used was a prior art as it had been previously used in a US Honda Patent and so the patent must not have been granted in the first place.
2. The applicants claim is for two spark plugs with two valves; the respondents design includes two spark plugs with three valves for which they held a license.
3. The applicant's invention is not new and novel as held under norms of **Bishwanth Prasad Radhey Shyam v. H.M. Industries.**
4. That the validity of a patent can be challenged.

Respondent:

1. The technology patented is a new invention.
2. That the technology falls under strata of inventive step.
3. The prior art as contended by the appellant not applicable and thus injunction be sustained.
4. On the balance of convenience, the learned senior counsel contended that the Respondent's product came into the market three years prior to the Appellant's product and that it had already achieved commercial success.

Held:

The court held that if the exact technological combination as patented was used by TVS then it could have led to infringement but there were improvements that were made and that instead of two, three valves were used and thus this wasn't infringement, the court further held that if there is a slightest variance and modification in the

technology used and if there are different combinations used to achieve the same result then it is not infringement.

The court relied on the case of **Improver Corporation and Ors. V. Remington Consumer Products and Ors** to reach to the conclusion.

The court also widened the scope of infringement of trademark, patent and copyright. Court observed that the matters of intellectual property rights hold important aspects and thus speedy disposal should be made. It further gave guidelines to the lower courts that the matters relating to intellectual property shall be heard on day to day basis and should be resolved within two to three months. Court further passed direction that all tribunals and lower courts have to strictly and punctually comply with this direction.

Analysis:

The court gave the ratio decidendi that if the different combinations and process is done differently than the patented procedure even then it is not an infringement and can be held as an inventive step. If different combinations are used for the same result then no infringement.

The proper approach to the interpretation of patents registered under the Patents Act 1949 was explained by Lord Diplock in **Catnic Components Ltd. v. Hill & Smith Ltd.** The language should be given a **purposive** and not necessarily a literal construction.

If the issue was whether a feature embodied in an alleged infringement which fell outside the primary, literal or a contextual meaning of a descriptive word or phrase in the claim (a variant) was nevertheless within its language as properly interpreted, the court should ask itself the following three questions:

1. Does the variant have a material effect upon the way the invention works? If yes, the variant is outside the claim. If no ❖
2. Would this (i.e. that the variant had no material effect) have been obvious at the date of publication of the patent- to a reader skilled in the art. If no, the variant is outside the claim. If yes ❖
3. Would the reader skilled in the art nevertheless have understood from the language of the claim that the patentee intended that strict compliance with the primary meaning was an essential requirement of the invention. If yes, the variant is outside the claim.

The Court subsequently in para 54 observed that:

It is also clear as per the decisions, for the purpose of deciding the novel features to constitute **pith and marrow** a purposive construction has to be given in order to make it essential requirement of the invention that any variant would follow outside the monopoly even if it could not have material effect upon the working of invention.

The the court in paragraph 69 emerged following principles:

- i. The validity of a patent can be challenged in a suit on various grounds of revocation as set out under Sections 64 and 107 of the Patents Act.
- ii. For the grant of interim injunction in a patent matter, the prima facie validity of the patent should be shown and also the prima facie infringement should be proved apart from the availability of balance of convenience and irreparable loss.
- iii. If the patent is a new one, the mere challenge at the Bar would be quite sufficient for the refusal of an interim injunction as compared to a fairly old patent.
- iv. Even in IPR cases, apart from prima facie case, the balance of convenience and irreparable injury, the mere registration of the patent alone would not be sufficient and the Court must look at the whole case i.e. the strength of the case of the plaintiff and the strength of the defendant.
- v. Irrespective of the examination and investigation made under Sections 12 and 13 of the Patents Act, no presumption can be drawn as to the validity of the patent and whether the application for revocation of the patent is pending and when serious controversy exists as regards the existence of an invention based on prior art, the Court should be slow in granting the injunction.