



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

+ **CS(COMM) No. 1426/2016**

% **6th March, 2018**

DOLBY INTERNATIONAL AB & ANR. Plaintiffs

Through: Mr. C.M. Lall, Sr. Advocate
with Ms. Saya Choudhary
Kapur, Mr. Vivek Ranjan, Mr.
Rupin Bahl, Mr. Ujjwal Sinha,
Mr. Nikhil Chawla, Mr.
Saksham Garg, Mr. Devanshu
Khanna and Ms. Karnika
Kanwar, Advocates.

versus

DAS TELECOM PRIVATE LIMITED & ORS. Defendants

Through: Mr. Saikrishna Rajgopal, Ms.
Julien George, Mr. Yatinder
Garg, Ms. Anu and Ms.
Arundhati Gopal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

I.A.No. 12309/2017 (U/s 151 CPC)

1. This application is disposed of as not pressed as plaintiffs have filed their evidence and the subject documents as per the plaintiffs have been proved by the plaintiffs.



I.A.No. 1216/2018 (15A(M) & Order XI(7) &(10) r/w 151 CPC)

2. This application is disposed of without prejudice to the rights and contentions of the plaintiffs to contend that certain evidence led by the defendants is beyond the pleadings in the suit. Plaintiffs are always entitled to cross-examine the witnesses of the defendants on any and every fact which the plaintiffs may however consider to be relevant. Of course, this Court equally takes on record the contentions of the defendants that with respect to evidence which is led by the defendants the same is as per issues which have been framed. However, these aspects are not being decided today and all these aspects will be considered at the stage of final arguments in the suit.

I.A stands disposed of.

I.A. No.388/2018 (under Order VI Rule 17 CPC and Order XI Rule 1(10) read with Section 151 CPC, filed by defendant nos. 3 and 4)

3. By this application defendant nos. 3 and 4 seek to amend their written statement to add a defence with respect to these defendant nos. 3 and 4 being not guilty of violating the patented technology of the plaintiffs under the registered patent nos. IN 230121, IN 242206, IN 264129 and IN 224775. The patents of the



plaintiffs are with respect to High Efficiency Advanced Audio Coding Technology.

4. The defendant nos. 3 and 4 by this application seek to amend the written statement to plead that these defendants were not aware till recently on 25.9.2017 that plaintiffs have licensed their subject technology covered under the suit patents to the company M/s Google INC, and this was not disclosed by the plaintiffs in the plaint although plaintiffs should have, and that since the defendant nos. 3 and 4 are using the subject technology under license from M/s Google INC which entity has been granted a valid license by the plaintiffs in the suit, therefore the defendants are not guilty of infringement of the patents of the plaintiffs which are subject matter of the present suit. In essence, the defendants seek to add a defence and a plea that the technology with respect to the patents which are subject matter of the suit, this technology has been licensed by the plaintiffs to M/s Google INC, and the defendant nos. 3 and 4 are using such technology on their devices/mobile phones in terms of a license granted by M/s Google INC, and consequently the defendants being authorised users of the subject technology should not be held as infringers of the



registered patents of the plaintiffs. I may note that defendant nos. 3 and 4 have in fact besides pleading in the amendment application their having license from M/s Google INC to use the subject technology have also in one way pleaded a case that it is in fact M/s Google INC which is the owner of the technology which is the subject matter of the registered patents of the plaintiffs in the suit.

5. When this suit came up way back on 14.12.2016, the applicants/defendant nos. 3 and 4 were represented. In the suit thereafter various miscellaneous proceedings took place including of completion of pleadings and admission/denial of documents. This process consumed time till 22.9.2017 i.e approximately a period of one year from appearance of the applicants/defendant nos. 3 and 4. Thereafter issues in the suit were framed on 22.9.2017, and these issues read as under:-

- "(i) Whether the plaintiff No.1 is the registered proprietor of the suit patents IN 230121, IN 242206, IN 264129 and IN 224775? OPP
- (ii) Whether the suit patents are Standard Essential Patents? OPP
- (iii) Whether the defendants are infringing the suit patents? OPP
- (iv) Whether the plaintiffs are entitled for the injunction prayed for? OPP
- (v) Whether the plaintiffs are entitled to damages/payment of royalties from the defendants, if so, for what period and to what extent? OPP
- (vi) Whether the plaintiffs are entitled for rendition of accounts, if so, for what period and from whom? OPP



- (vii) Whether the plaintiffs have offered to the defendants license on fair, reasonable and non-discriminatory (FRAND) terms and conditions? OPP
- (viii) Whether the defendants are unwilling licensee? OPP
- (ix) Whether the suit patents are invalid in nature and are liable to be revoked in the light of the grounds raised by the defendants in its counter-claim? OPD
- (x) Whether the defendants are entitled to the declaration prayed for in the counter-claim? OPD
- (xi) Whether the defendants are entitled to damages and legal costs on point of malicious and baseless prosecution by the plaintiffs? OPD
- (xii) Whether the suit is not maintainable against defendant No.1? OPD-1 [CS(COMM) 1425/2016]
- (xiii) Whether the defendants mobile and handset incorporate the portions of the Standard i.e. ISO/IEC 14496:3 to which the suit patents are claimed to be mapping? OPP
- (xiv) Relief.”

6. Admittedly, the two defences which are now sought to be taken by the defendant nos. 3 and 4 by amending the written statement with respect to M/s Google INC being the owner of the technology of which plaintiffs claim to be the owner in terms of the registered patents which are subject matter of the suit, as also the fact that M/s Google INC is a licensee from the plaintiffs of the technology, subject matter of the registered patents of the plaintiffs, and that the applicants/defendant nos. 3 and 4 are the licensees from M/s Google INC, are not defences which are not found in the existing written statement filed by the applicants/defendant nos. 3 and 4.



7. The subject suit is a commercial suit filed under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter referred to as the ‘Commercial Courts Act’). Suits filed under the Commercial Courts Act are treated differently than ordinary suits which are filed in a civil court. In terms of various provisions of the Commercial Courts Act specific time lines are provided with respect to different aspects of completion of pleadings or admission/denial of documents or for case management hearing, etc. The object of the provisions of the Commercial Courts Act read with amended provisions of CPC applicable to Commercial Courts is to ensure that there is no unnecessary delay in disposal of the commercial suit. Once specific time lines are fixed and there is a strict procedure provided in terms of the Commercial Courts Act, parties are by the statute put to notice that they have to very carefully contest the suits filed as commercial suits and that failing to comply with statutory timelines and a strict procedure, certain adverse consequences may flow on account of lack of application by a contesting party.



8. The provision with respect to amendment of pleadings is contained in Order VI Rule 17 CPC and which provision reads as under:-

“17. Amendment of Pleadings.- the Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

9. The provision of Order VI Rule 17 CPC was amended by Amending Act of CPC of 2002 whereby entitlement of a party to amend the pleadings was restricted. This new position was as against the earlier position of law prior to amendment of Order VI Rule 17 CPC and whereby amendments were liberally granted to the pleadings of the parties even at a very late stage of the suit. As per the amended provision of Order VI Rule 17 CPC amendments ordinarily should not be granted once trial has commenced i.e parties have commenced the leading of their evidences. Once in normal suits amendment should not be allowed after commencement of trial, obviously this was with the object of the legislation that unnecessary delays were happening to the finalization of the suits on account of liberally allowing of



amendments even at later stages. By curbing the liberal entitlement to amend the pleadings in certain cases injustice may take place because even in deserving cases where earlier amendments would have been allowed, but could not be after the year 2002, the legislature was well however aware that injustice in some cases should not be a benchmark for not requiring amendments to be ordinarily allowed only prior to commencing of trial. This law with respect to ordinary suits of disallowing amendments after commencement of trial in my opinion will with greater emphasis apply to commercial suits under the Commercial Courts Act, inasmuch as, the procedure and the requirements under the Commercial Courts Act are very strict with respect to commercial suits with the stated object of the legislature to ensure early disposal of the commercial suits. Of course it is not that even after commencement of trial amendment to pleadings should never be allowed, but that amendments should be allowed only in very limited cases having such facts that courts should depart from the normal rule of declining amendments after commencement of trial.

10. Firstly, this Court would like to observe that the amendments which are prayed for by the applicants/defendant nos.3



and 4 are mutually destructive. Mutually destructive cases cannot be allowed to be set up in the pleadings. Alternative cases can be set up in pleadings but mutually destructive pleas cannot be set up. The mutually destructive plea is that M/s Google INC cannot be at one point of time the owner of the patented technology which the plaintiffs claims and that M/s Google INC is not the owner of the patented technology which the plaintiffs claims and that M/s Google INC is only the licensee of that technology from the owners/plaintiffs. Therefore for this very first reason the mutually destructive pleas which are sought to be got added in the written statement cannot be allowed. Counsel for the applicants/defendant nos. 3 and 4 argued that in the amendment application the applicants/defendant nos. 3 and 4 have not stated that M/s Google INC is the owner of the patented technology, however this Court finds that the language of the amendment application is capable of two interpretations with one being that M/s Google INC is the owner. In any case even if this stand of applicants/defendant nos. 3 and 4 is accepted, yet independently for reasons given hereinafter the amendment application cannot be allowed.



11. The amendments as prayed for with respect to M/s Google INC being the owner of the subject technology or M/s Google INC being a licensee from the plaintiffs and defendant nos. 3 and 4/applicants being further licensees from M/s Google INC are in law valid defences to a suit alleging infringement of patents. Such defences could always have been taken by the applicants/defendant nos. 3 and 4 at the very first stage of filing of their written statement. This is because the applicants/defendant nos. 3 and 4 know that in their devices/mobile phones they are using a technology in terms of a Google app installed on the mobile phones and therefore the applicants/defendant nos. 3 and 4 could have used the subject technology only if M/s Google INC was the owner of the subject technology or M/s Google INC was a licensee from the owner of the subject technology. Therefore, when the applicants/defendant nos. 3 and 4 installed the subject technology on their phones through Google app they were put to notice to find out from M/s Google INC as to whether M/s Google INC was the owner of the subject technology or M/s Google INC was an authorised licensee of the subject technology. This aspect of the aforesaid enquiries to be made has nothing to do



with any concealment of facts by the plaintiffs in not stating that (and as is the new case of the defendant nos. 3 and 4) that plaintiffs had licensed its technology to M/s Google INC because surely anyone who purchases any property or licenses in property, movable or immovable, will definitely at the time of entering into a contract for purchase/license will be naturally put to asking a query with respect to entitlement of the transferor of having a valid title to transfer the property which is being transferred. It does not lie in the mouth of the applicants/defendant nos. 3 and 4 to argue that it is only on 25.9.2017 that the plaintiffs filed and revealed their licenses with M/s Google INC with respect to the technology which is the subject matter of the registered patents of the plaintiffs in the suit because this the applicants/defendant nos. 3 and 4 were very much put to enquiry when the patented technology of plaintiffs was installed in the devices manufactured by the applicants/defendant nos. 3 and 4. I, therefore, reject the argument on behalf of the applicants/defendant nos. 3 and 4 that the applicants/defendant nos. 3 and 4 came to know of the licensing of the plaintiffs technology to M/s Google INC only on 25.9.2017 because the applicants/defendant nos. 3 and 4 right since



the time they installed the subject technology on their mobile devices ought to have taken necessary information from M/s Google INC as to on what basis M/s Google INC were giving the technology to the applicants/defendant nos. 3 and 4. Therefore it is stated that there is no basis for the applicants/defendant nos. 3 and 4 to claim that it is only on and after 25.9.2017 that they came to know that plaintiffs have licensed the subject technology of the registered patents of the suit to M/s Google INC and that consequently the applicants/defendant nos. 3 and 4 since are licensees from M/s Google INC, hence being authorised user of the technology from the licensees of the plaintiffs, hence the applicants/defendant nos. 3 and 4 would not be infringers.

12. I have already stated above that disallowing of amendments may cause prejudice to a party in a particular case, but once law requires specific time lines then if parties are not vigilant in exercising their rights then the consequence of prejudice of such a party has to suffer consequences which are legally mandated. The facts of this case are not such that Court should depart from the general rule of disallowing amendments to pleadings because of trial having commenced. Parties cannot contend that a valid defence is



sought to be raised which would have great bearing on the merits of the suit and therefore the amendment be allowed even at later stages after commencement of trial. In fact, I may note that in this suit plaintiffs' evidence has already been filed when the amendment application was filed and now evidence of plaintiffs is completed and evidence now has to be led on behalf of the defendants with respect to issues which have been framed in the suit.

13. In view of the aforesaid discussion, the present application under Order VI Rule 17 CPC and Order XI Rule 1(10) read with Section 151 CPC is completely misconceived and is liable to be and is accordingly dismissed.

14. Section 35 CPC as amended to commercial courts requires that courts must adopt pro-active approach in imposition of costs with respect to every stage of a commercial suit. Courts have been in fact mandated and have been asked to be vigilant with respect to requirement of imposition of costs at different stages including stages of disposal of interim applications. Accordingly, since costs have to follow the result i.e costs have to follow the dismissal of the application in favour of the plaintiffs, the plaintiffs will file affidavit



of their authorised officer supported by the necessary documents with respect to costs incurred by the plaintiffs for defending of this application, and which affidavit be filed within a period of two weeks from today. Costs as stated in such affidavits will be paid by the applicants/defendant nos. 3 and 4 to the plaintiffs within two weeks thereafter.

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15. List for reporting of evidence being recorded before the Local Commissioner on 17th August, 2018.

MARCH 06, 2018

VALMIKI J. MEHTA, J