

**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Petition No. 1/2006

EPC Industries Limited A Company Incorporated Under The Companies Act, 1956 And Having Its Registered Office At 201, Delta, Hiranandani Gardens, Powai, Mumbai 400 076 Maharashtra.

----Petitioner

Versus



Arihant Evergreen Agro Plast Textiles Private Limited, A Company Incorporated Under The Companies Act, 1956 And Having Its Registered Office At Off Kesar Bhavan Opposite, Mayank Cinema, Station Road, Jaipur.

Mr. Pukhraj Jain, Indian Inhabitant, Carryington Business From Off Kesar Bhavan Opposite Mayank Cinema, Station Road, Jaipur.

----Respondents

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For Petitioner(s)	:	Mrs. Naina Saraf
For Respondent(s)	:	Mr. Suresh Sahni with Mr. R.M. Sharma, Mr. Ashwani Gupta on behalf of Mr. G.D. Bansal

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**HON'BLE MR. JUSTICE MOHAMMAD RAFIQ**

**Judgment**

**08/03/2018**

Originally the petitioner filed a civil suit under Section 104/106/108 of the Patent Act, 1970 for damages and permanent injunction against the defendant-respondent, in the court of District Judge, Jaipur City, Jaipur, which came to be transferred to the court of Additional District Judge No.4 for adjudication. The defendant-respondent filed counter claim under Section 64(1) of the Patent Act, 1970. Section 104 of the Patent Act, 1970 provides that where a counter claim for revocation of the Patent is made by

the defendant the suit along-with the counter claim shall be transferred to the High Court for decision. Keeping in view the provisions of Section 104 of the Patent Act, 1970, the court below sent the original plaint along-with the copy of the reply to this court and that is why that has been registered as S.B. Civil Miscellaneous Petition No.1/2006.



This matter has come up on the board for orders on the application bearing inward no.2599 dated 17.10.2018 filed by the plaintiff EPC Industries Limited under Order 7 Rule 14 of the Code of Civil Procedure for taking samples on record.

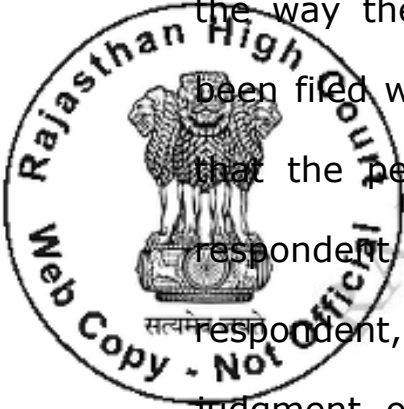
The plaintiff-petitioner has claimed that the defendant-respondent has infringed its right of Patent as it has copied and manufactured the same product with the same technology, which is in the name of the plaintiff-petitioner. It is for the convenience of the court that samples of both the products are placed before this court. Prayer is therefore made that the samples be taken on record.

Mrs. Naina Saraf, learned counsel for plaintiff-petitioner, has argued that without taking the sample on record it would be difficult for the petitioner to explain technology of the products and show the resemblance of the product technology copied by the defendant-respondent. Taking the samples on record would be necessary for just and correct decision by this Court. In support of the argument, learned counsel has relied on the judgment of the Supreme Court in Billa Jagan Mohan Reddy Vs. Billa Sanjeeva Reddy – (1994) 4 SCC 659 and that of the Madras High Court in S. Rathinaswamy Vs. S. Bhanumathi – AIR 2006 Mad 221.

Mr. Suresh Sahni, learned counsel for the defendant-respondent, has contested the application by filing reply thereto.

It is contended that the samples sought to be taken on record cannot be at this stage permitted to be taken on record as the matter is not at the stage of recording evidence, rather the matter for last so many dates, has been posted for final arguments. He referred to the General Rules (Civil), 1986 to argue that the said Rules do not permit marking of exhibits on the 'Material Articles', the way the plaintiff-petitioner has sought. The application has been filed with an intention to drag the matter to the eternity so that the perpetual harassment initiated against the defendant-respondent does not come to an end. Learned counsel for the respondent, in support of the argument, has relied on the judgment of this court in Kalyan Sahai Vs. Mangi Lal Selibet Disciple.

The Supreme Court in Billa Jagan Mohan Reddy, supra, albeit in the context of application under Order 13 Rule 1 of the CPC filed by the appellant in a reference proceeding under Section 30 of the Land Acquisition Act (where against the appellant approached the High Court in revision petition, which too was dismissed), while allowing at the stage of final arguments production certain documents on record observed that if the documents are found to be relevant to decide the real issue in the controversy, and when the court felt that interest of justice requires that the documents may be received, the appellate court, exercising the power under Order 41, Rule 27 CPC, would receive the documents and consider effect thereof. It was observed that when the documents are sought to be produced in the trial court, before the arguments are completed, normally they may be received; an opportunity given to prove them and rebuttal if any and their relevance and effect they may have, be considered in deciding the issues arising in the



controversy. The trial court was therefore not justified in refusing to condone the delay and to receive the documents.

Though the Order 13 Rule 2 of the CPC has been omitted by the Code of Civil Procedure (Amendment) Act, 1999, Order 7 Rule 14(3) of the CPC confers the power on the court to receive the documents which have not been filed along-with the plaint/written statement with the leave of the court in deciding the cases.

In the present case, the suit is arising out of the Patent Act and dispute between the parties is with regard to infringement of the patent right of the plaintiff-petitioner by the defendant-respondent. Despite there being delay on the part of the plaintiff-petitioner to produce the patented item, the product of which it has obtained patent and product of the defendant which according to the plaintiff violates its patent right, this Court, in the interest of justice, deems it appropriate to allow those two products to be brought on record as that would indeed be necessary for just and correct decision the matter, however, subject to payment of costs of Rs.10,000/- by the plaintiff-petitioner to the defendant-respondent. Mr. Sunil Vaswani, the sole witness of the plaintiff-petitioner, should appear before the Deputy Registrar (Judicial) of this Court on 21.03.2018 to formally get these two items exhibited/marked as Article-1 and Article-2.

The application is accordingly allowed.

(MOHAMMAD RAFIQ),J

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