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

Date of Decision:-14th December, 2023.

+ **CS(COMM) 884/2023, I.As. 25074/2023, 25075/2023, 25076/2023
& 25077/2023**

FREEBIT AS

..... Plaintiff

Through: Ms. Shwetasree Majumder, Ms.
Tanya Varma, Ms. Devyani Nath,
Mr. Prithvi Gulati, Advs. (M.
8802958896)

versus

EXOTIC MILE PRIVATE LIMITED

..... Defendant

Through: Mr. Gaurav Miglani, Mr. Tarun
Gandhi, Mr. Davesh Vashishtha, Mr.
Sharabh Srivastav, Ms. Mallika
Chadha, Ms. Nanki Arneja Advs.
(M. 9958445115)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

PRATHIBA M. SINGH, J.

1. This hearing has been done through hybrid mode.

I.A.25076/2023 (for exemption)

2. This is an application seeking exemption from filing originals/certified/cleared/typed or translated copies of documents, left side margins, electronic documents, etc. Original documents shall be produced/filed at the time of Admission/Denial, if sought, strictly as per the provisions of the Commercial Courts Act and the DHC (Original Side) Rules, 2018.



3. Exemption is allowed, subject to all just exceptions.
4. Accordingly, the application is disposed of.

I.A.25075/2023 (for additional documents)

5. This is an application seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter, 'Commercial Courts Act'). The Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act and the DHC (Original Side) Rules, 2018.

6. Application is disposed of.

I.A.25077/2023 (u/S 12A of the Commercial Courts Act)

7. This is an application filed by the Plaintiff seeking exemption instituting pre-litigation mediation under Section 12A of the Commercial Courts Act. The Supreme Court in *Yamini Manohar v. T.K.D Keerthi, 2023 SCC OnLine SC 1382*, has observed that in absence of any statutory requirement or rules enacted by the Central Government, a plaint need not be accompanied with a specific application to waive the process of pre-litigation mediation. The Court can decide whether an exemption from instituting of pre-litigation mediation should be granted or not. The said decision is to be made based on the facts and circumstances of each case as also the pleadings and oral submissions in the Court.

8. Accordingly, in view of the above decision of the Supreme Court, this application is disposed of.

CS (COMM) 884/2023

9. Let the plaint be registered as a suit.
10. Issue summons to the Defendant. Summons are accepted by Mr.



Miglani, Id. Counsel.

11. The written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

12. Liberty is given to the Plaintiff to file the replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendant, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

13. List before the Joint Registrar for marking of exhibits on 12th February, 2024. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

14. List before Court on 10th May, 2024.

I.A. 25074/2023 (u/O XXXIX Rules 1 & 2 CPC)

15. The present suit has been filed by the Plaintiff- Freebit AS seeking an injunction against the Defendant- Exotic Mile Private Limited in respect of the Plaintiff's granted patent bearing number IN 276748 (*hereinafter 'suit patent'*). The title of the invention is '*Improved Earpiece*' and the bibliographic details of the said patent are set out below:

Patent Number	276748
Application Number	7050/CHENP/2009
Type of Application	PCT NATIONAL PHASE APPLICATION



Parent Application Number	---
PCT International Application Number	PCT/NO08/00190
Grant Title	Improved Earpiece
Date of Patent	30/05/2008
Date of Grant	31/10/2016
Date of Recordal	31/10/2016
Appropriate Office	CHENNAI
PCT International Filing Date	30/05/2008

16. The case of the Plaintiff is that it has designed '*C-Shape earphone interface*'. The illustration as given in paragraph 15 of the plaint is set out as under:



17. As per paragraphs 18 to 21 of the plaint, it is averred that there are a large number of corresponding foreign applications, which have either been granted or are pending for grant. At paragraph 21, it has been mentioned that the corresponding patent bearing publication number 'EP2177045A1' has been revoked by the European Patent Office vide order dated 27th April,



2018. The details of the other foreign patents, as mentioned in paragraph 19 of the plaint, are extracted below:

S. No.	Name of the Country	Date of Application	Application Number	Status
1.	ARIPO	30/05/2008	AP/P/2009/005049	Pending
2.	Oapi	30/05/2008	1200900400	Pending
3.	Australia	30/05/2008	2008257820	Published
4.	China	30/05/2008	200880018303.9	Pending
5.	Japan	30/05/2008	2010-510247	Pending
6.	Indonesia	30/05/2008	W00200903305	Pending
7.	South Korea	30/05/2008	2009-7024923	Granted
8.	Israel	30/05/2008	202192	Pending
9.	Canada	30/05/2008	2,689,100	Pending
11.	Egypt	30/05/2008	PCT1731/2009	Pending
12.	Eurasia	30/05/2008	2009148293	Pending
13.	New Zealand	30/05/2008	PCT/NO08/00190	Pending
14.	Philippines	30/05/2008	PCT/NO08/00190	Pending
15.	USA	30/05/2008	12/600795	Granted

18. It is submitted by Ms. Majumder, Id. Counsel for the Plaintiff that the Plaintiff has several licensees, including Boat, JBL, Skullcandy, Harman etc. who are paying royalties to the Plaintiff for its patent portfolio.

19. Id. Counsel for the Plaintiff has also taken the Court through the Claims and the Complete Specification of the suit patent, as also the Claim



Mapping chart, provided at paragraph 33 of the plaint, mapping the Claims of the suit patent with the Defendant's products.

20. *Per Contra*, Mr. Gaurav Miglani, Id. Counsel appearing for the Defendant, on advance notice has handed over a compilation of documents, which according to him reveal that the information of the corresponding patents given by the Plaintiff is completely inaccurate, misleading and false.

21. As per Id. Counsel for the Defendant, corresponding foreign patents of the suit patent have been invalidated/refused in several jurisdictions, including China, Japan, New Zealand, USA, Europe and Brazil. He has handed over copies of the decision of the European Patent Office ('EPO'), and the judgment delivered by the High Court of Justice, Patent, Court, UK.

22. Id. Counsel also placed reliance upon the decision dated 18th April, 2018 of the Patent Trial and Appeal Board ('PTAB') in the US titled '**Bose Corporation v. Freebit AS**' bearing no. **IPR2017-00129**. The said decision has been upheld by the US Court of Appeals for the Federal Circuit ('CAFC') vide judgement dated 8th October, 2019 titled '**Freebit AS v. Bose Corporation**' (18-2365). According to Id. Counsel, all these decisions show that the suit patent has been held to be invalid, due to lack of novelty. He submits that, on this very ground, the Plaintiff's prayer for interim injunction ought to be non-suited.



23. The suit patent, IN 276748, was filed in India by the Plaintiff as a PCT National Phase Application on 30th November, 2009 with application number '7050/CHENP/2009', claiming priority from a Norwegian Patent Application bearing number 'NO328038'. The International Filing Date for the PCT application is 30th May, 2008, therefore, the term of the patent is till 29th May, 2028. After examination, the suit patent was granted on 31st October, 2016.

24. The suit patent has been filed with 5 Claims, with one Independent Claim. The Claims of the suit patent are set out below for ready reference:

"We claim:

1. An ear unit for stable fittings in an ear, wherein said ear unit (10) is shaped as a decremental curve, in that said decremental curve (9) of the outer part of the ear unit (10) corresponds to antihelix (13) of the ear with a surface shaped in such a way that the curve falls along the inner part of the antihelix (13) and is partly positioned under antitragus (3), and that the distance between the ends (5, 8) of the decremental curve is approximately equal to the distance between a first cavity formed under the tragus (4) of the ear and second cavity covered by the lower node (15) of the antihelix of the ear, the upper part of the curve projecting in underneath a flap (2) covering the lower part of the second cavity,

characterized in that said ear unit has a curvature providing an improved attachment in that said curvature follows the inner surface of the ear mussel (22) to provide a contact surface, thereby enabling the ear unit to fit closely against the ear mussel when the ear unit (10) is positioned into the ear.

2. The ear unit according to claim 1, wherein the ear unit (10) comprises a part (7) extending downwards, the transition between said part (7) and the ear unit is



formed in such a way that it aligns along the intertragic notch (14).

3. The ear unit according to claims 1-2, wherein the car unit further comprises at least one unit from the group comprising ear phone and microphone.

4 The car unit according to claims 1-3, wherein said car unit further comprises a unit from the group of wireless communication unit for use with mobile piece and the like, and wired communication unit for use with music system and the like.

5. A device comprising an ear unit according to claims 1-4, wherein said car unit is operated together with at least a second ear unit according to claims 1-4 to form a stereo effect.”

25. From a reading of the Complete Specification, and the Claims of the suit patent as also the pleadings placed on record by the Plaintiff, the suit patent discloses an ear unit designed for stable and comfortable attachment to the ear. A key feature claimed in the suit patent is the adoption of a decremental curve design, which aligns with the ear’s anatomy, particularly the antihelix and antitragus, and a curvature that closely fits the ear mussel, thereby improving fit and comfort.

26. As per the Plaintiff, the effect of this suit patent is in achieving stability, while being suitable for mass production and avoiding discomfort of ear canal blockage. The said conclusion is also clear from the objective and summary of the suit patent given in the Complete Specification. The said objective and summary are set out below:

“Objective of the invention

Based on the prior art the object of the invention is to avoid these disadvantages and limitation and simultaneously provide a further improvement in stability and comfortable attachment of an ear unit with the possibility of further functionality.



Summary of the invention

This is provided by a device as disclosed by claim 1. Further features of the invention are disclosed by the remaining dependent claims. The shape of the ear unit keeps the ear canal to certain degree open towards the outer environment for improved comfort when compared to a unit that closes or blocks the ear canal.

Brief description of the drawings.

Where is embodiments of the invention will be disclosed with references to the drawings, where:

Fig. 1 shows schematically an ear with a curve along with a part extending down.

Fig. 2 shows an ear unit according to the present invention along with a microphone device.

Fig. 3 shows an ear unit according to the present invention with a curvature enabling the ear unit to fit closely against the ear mussel.

Fig. 4 shows the curvature of fig. 3 from the opposite side and also an incision shaped in such a way that the incision is stabilized comfortably in the intertragic notch.

Fig. 5 shows an embodiment of the present invention comprising the curvature fitting closely against the ear mussel, the incision positioned stably into the intertragic notch and a part extending down from the ear unit.”

27. The Plaintiff has placed on record the Form 27 filed by one of the licensees of the suit patent, as also Form 3 dated 24th March, 2016. However, none of the decisions handed over by the Id. Counsel for the Defendants have been placed on record by the Plaintiff.

28. The primary submission of the Defendant is two-fold:

- Mis-representation and suppression of material facts by the Plaintiff;
- Challenge to the validity of the suit patent, on the basis of decisions of



corresponding foreign patents being invalidated or refused.

29. As per the *High Court of Delhi Rules Governing Patent Suits, 2022*, (hereinafter, 'Patent Suit Rules') it is necessary, to the extent possible, for a plaintiff to include details of corresponding foreign patent applications, as well as information relating to any orders passed by a Court or Tribunal concerning the same or substantially similar invention as asserted in the suit. The relevant extracts from the Patent Suits Rules are set out below:

“3. *Content of Pleadings*

A. Plaintiff

The Plaintiff in an infringement action shall, to the extent possible, include the following aspects:

-
- (iv) **Brief summary of international corresponding applications/patent(s) and grant thereof including details of worldwide protection for the invention;***
 - (v) Brief prosecution history of the suit patent(s);*
 - (vi) Details of any challenge to the suit patent(s) and outcome thereof;*
 - (vii) **Details of orders, if any, passed by any Indian or international court or tribunal, upholding or rejecting the validity of the suit patent or a patent which is for the same or substantially the same invention;**”*

30. Further, Order XI Rule 1 CPC, as amended by the Commercial Courts Act, 2015, obligates the Plaintiff filing suit, to file *all* documents which would have a bearing on the suit. The said Rule specifies that the Plaintiff even has **a duty to file those documents, which are adverse to the case of the Plaintiffs.** Therefore, overall, the said Rule mandates comprehensive disclosure by a Plaintiff, to ensure that all relevant information is available to the Court, for a fair adjudication. The relevant extract of the said rule is



set out below:

“ORDER XI DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS IN SUITS BEFORE THE COMMERCIAL DIVISION OF A HIGH COURT OR A COMMERCIAL COURT

1. Disclosure and discovery of documents. —

(1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including: —

(a) documents referred to and relied on by the plaintiff in the plaint;

(b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case...”

31. The above set of rules show that at the time of filing of the suit, a basic enquiry ought to be made, if there are corresponding patents internationally, and if any of them have been rendered invalid by any Court or Tribunal.

32. In the present suit, however, a bare perusal of paragraph 19 of the plaint shows that in respect of some of the countries, where the suit patent has either been revoked, refused, abandoned, lapsed, have been shown as either pending or granted. Illustratively, the status of the Plaintiff's patent application in other countries is as follows:



S.NO.	NAME OF THE COUNTRY	DATE OF THE APPLICATION	APPLICATION NUMBER	AS PER THE PLAINT	CURRENT STATUS
1.	ARIPO	30/05/2008	AP/P/2009/005049	Pending	Lapsed
2.	Oapi	30/05/2008	1200900400	Pending	-
3.	Australia	30/05/2008	2008257820	Published	Ceased
4.	China	30/05/2008	200880018303.9	Pending	Withdrawn on 17.12.2020/ refused
5.	Japan	30/05/2008	2010-510247	Pending	Right ceased/ invalidated
6.	Indonesia	30/05/2008	W00200903305	Pending	-
7.	South Korea	30/05/2008	2009-7024923	Granted	Granted
8.	Israel	30/05/2008	202192	Pending	Patent not in force
9.	Canada	30/05/2008	2,689,100	Pending	Granted
10.	Egypt	30/05/2008	PCT1731/2009	Pending	-
11.	Eurasia (Russian Federation)	30/05/2008	2009148293	Pending	Granted
12.	New Zealand	30/05/2008	PCT/NO08/00190	Pending	Withdrawn on 01.12.2020
13.	Philippines	30/05/2008	PCT/NO08/00190	Pending	-
14.	USA	30/05/2008	12/600795	Granted	-

33. As evident from the table above, the status of the suit patent varies in different countries:

- it has been refused in China,
- invalidated in Japan,
- lapsed in New Zealand,
- revoked in Europe, as mentioned in paragraph 20 of the plaint



- Additionally, while the corresponding patent in the USA is stated to be abandoned in the chart within the plaint, it has actually been invalidated by the Patent Trial and Appeal Board (PTAB), a decision which was confirmed by the Court of Appeals for the Federal Circuit.

34. The Court could have ignored some minor lapse in mentioning an incorrect status. However, paragraph 19 of the plaint when contrasted with the statement handed over by Mr. Miglani, Id. Counsel today, as also the copies of the judgment handed over, would show that there is gross suppression and misrepresentation of material facts, which could have a bearing on the case. Apart from the submission of Id. Counsel for the Defendant and the documents handed over in Court, the Court has also independently ascertained through publicly available patent search Databases 'PATENTSCOPE' and 'ESPACENET' that at least the corresponding patent application filed in Japan bearing publication number JP2012170136A, was refused in Trial and Appeal vide order dated 26th May, 2015 itself.

35. The said position clearly indicates that even if the submission of Ms. Majumdar, Id. Counsel for the Plaintiff is considered that Form-3 data itself has been given in paragraph 19 of the plaint, the said information supplied in Form 3 is also incorrect, as the date of submission of Form-3 is reflected as 24th May, 2016, whereas, the corresponding Japanese patent has been refused vide order dated 26th May, 2015, almost one year before the filing of Form 3. This discrepancy also raises concerns regarding the accuracy of the information supplied in Form 3 submitted by the patentee before the Patent Office.

36. In *Satish Khosla v. M/s. Eli Lilly Ranbaxy Ltd.* [71 (1998) DLT 1



(DB)], the Id. Division Bench of this Court has underscored the importance of candour and forthrightness in instituting legal proceedings. It is incumbent upon a Plaintiff that approaches the Court to approach the Court with ‘clean hands’, a principle that mandates the full disclosure of all relevant and material facts. This disclosure is not limited to facts that bolster a party's case but extends to all information that could potentially aid in a comprehensive and fair adjudication of the dispute. The duty of disclosure encompasses not only the submission of all documents pertinent to the current litigation but also an obligation to inform the Court of any previous litigations between the parties, any previous litigations concerning the suit patent, along with their respective outcomes. Such transparency is indispensable for ensuring that the Court has a complete and unobscured view of the relevant factual landscape, which is crucial for the fair dispensation of justice. The relevant extract of the said decision is set out below:

15. In S.P. Chengalvaraya Naidu v. Jagannath and Others, AIR 1994 SC 853 it was held that the Courts of Law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. "It can be said without hesitation that a person whose case is based on false-hood has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party."

16. ...



... It is contended by Mr. Oberoi, appearing on behalf of the respondent that the respondent had no intention or motive to suppress the pendency of the earlier application in which the stay was not granted and having disclosed in the plaint that a suit between the parties was pending, it was not relevant or necessary to mention that in the said suit the Court had not granted any stay in its favour. In our view, the arguments are wholly fallacious. A party must come to the Court with clean hands and must disclose all the relevant facts which may result in appreciating the rival contentions of the parties. In our view, a litigant, who approaches the Court, must produce all the documents which are relevant to the litigation and he must also disclose to the court about the pendency of any earlier litigation between the part is and the result thereof. ...

... In our opinion, it was obligatory upon the respondent to disclose to the Court that in the application filed in the earlier suit a similar relief had been claimed, however, the Court had not granted the said relief. In our view, if these facts were before the Court on February 6, 1997 when the second suit came up for hearing before it, may be Hon'ble the Single Judge was persuaded not to grant any ex parte stay in favor of the respondent. Moreover, in a suit for specific performance of an agreement to register the agreement of lease, it appears to us that the plaintiff could not claim an injunction which had already been claimed in Suit No. 3064/96. We are, Therefore, of the opinion that the respondent has not come to the Court with clean hands and has also suppressed material facts from the Court with a view to gain advantage in the second suit. This in our view is clearly over reaching the Court.”

37. The Supreme Court in *Arunima Baruah v. Union of India (UOI)* [MANU/SC/7366/2007] emphasised the importance of the maxim “He who



comes into equity must come with clean hands.” The Supreme Court ruled that suppression of material facts by a party can impact their right to equitable relief. This principle would also be relevant in a suit for patent infringement, where the Plaintiff’s failure to disclose revocations or invalidations of corresponding foreign patents of the asserted patent has a material bearing on the case. Such suppression and misrepresentation would undoubtedly affect the Court’s willingness to grant equitable relief, as it contradicts the principle of approaching the court with clean hands.

38. Vide judgement dated 29th July, 2010, a ld. Single Judge of this Court, in *Charanjit Thukral and Ors. v. Deepak Thukral and Ors. (2010:DHC:3737)* again emphasised that Plaintiffs seeking relief from the Court, whether equitable or otherwise, are obligated to honestly disclose all material facts relevant to a case. Plaintiffs seeking an injunction must inform the Court of all material facts pertinent to their claim for an injunction. Failure to do so, even under the guise of being unaware of the significance of any omitted facts, is not permissible. Court possesses the inherent authority to deny an injunction if the plaintiff acts in bad faith or withholds any material facts. The relevant extracts of the said decision are set out below:

17. Interim order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fate accompli before the final hearing. The purpose of an interlocutory injunction is, to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty was resolved in his favour at the trial.



18. It is settled principle of law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which has bearing on the adjudication of the issues raised in the case. It is the duty of the party asking for an injunction to bring to the notice of the Court all facts material to the determination of his right to have injunction and it is not an excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward. Where plaintiff does not act bona fide and does not put every material facts before the Court, the Court is within its inherent power to refuse to grant him injunction, even though there might be facts upon which injunction might be granted. Conduct of the plaintiff is very material in bringing the case and disclosing the facts before the Court. plaintiff is required to make fullest possible disclosure of all material facts within his knowledge to the Court and if he does not make that fullest possible disclosure, he cannot obtain any advantage from the proceedings and is liable to be deprived of any advantage he might have already obtained by means of the order which has thus wrongly been obtained by him by concealment of material facts.

39. The specific view that suppression and misrepresentation can have a bearing on interim injunction application, especially in the context of IP disputes, was upheld by a Id. Single Judge of this Court in *Aura Synergy India Ltd & Anr v. M/s New Age False Ceiling Co Pvt Ltd*, [2016:DHC:1109]. The said decision has also been approved by the Id. Division Bench vide judgement dated 18th November, 2016 in *Aura Synergy India Ltd & Anr v. M/s New Age False Ceiling Co Pvt Ltd*, [2016:DHC:7530-DB].



40. Further, in *FMC Corporation And Ors v. GSP Crop Science Private Limited*, [2022 SCC OnLine Del 3784], this Court held that ‘suppression and misrepresentation’ is one of the grounds available to a Defendant to challenge the grant of an interim injunction. Vide judgement dated 5th July, 2023, similar grounds of concealment of documents was cited as one of the factors for denial of interim injunction by the Coordinate Bench of this Court in *Bayer Healthcare LLC v. Natco Pharma Limited*, [2023:DHC:4458].

41. The Id. Division Bench of this Court in *F. Hoffmann- LA Roche Limited v. Cipla Limited*, [ILR (2009) Supp. (2) Delhi 551], held that the grant of an interim injunction is not based solely on the patent’s existence or grant, but needs to take into account the potential challenges to its validity. The relevant extract from the said decision is set out below:

55. The question before this Court is when can it be said that the defendant has raised a credible challenge to the validity of a patent held by the plaintiff in an infringement action? During the course of the argument it was suggested by counsel that the challenge had to be both strong and credible. Also, the defendant resisting the grant of injunction by challenging the validity of the patent is at this stage required to show that the patent is "vulnerable" and that the challenge raises a "serious substantial question" and a triable issue. Without indulging in an exercise in semantics, the Court when faced with a prayer for grant of injunction and a corresponding plea of the defendant challenging the validity of the patent itself, must enquire whether the defendant has raised a credible challenge. In other words, that would in the context of pharmaceutical products, invite scrutiny of the order granting patent in the light of Section 3(d) and the grounds set out in Section 64 of



the Patents Act 1970. At this stage of course the Court is not expected to examine the challenge in any great detail and arrive at a definite finding on the question of validity. That will have to await the trial. At the present stage of considering the grant of an interim injunction, the defendant has to show that the patent that has been granted is vulnerable to challenge. Consequently, this Court rejects the contentions of the plaintiffs on this issue and affirms the impugned judgment of the learned Single Judge.

42. In the instant case, apart from the non-disclosure or mis-description of the above facts relating to revocation, invalidation of the corresponding patents, there are at least two judgements which seriously impinge upon the validity of the suit patent. The said judgements which discuss in detail the reasons for invalidating the corresponding patents, could not have been held back from the Court and not filed on record. They have been rendered by the US Federal Court of Appeals and the UK Patent court in the following decisions:

- ***Freebit AS v. Bose Corporation, decision dated 8th October, 2019 bearing no. 18-2365.***
- ***Bose Corporation v. Freebit AS, [2018] EWHC 889 (Pat).***

43. In view of the above facts, clearly, no *prima facie* case has been established by the Plaintiff, considering that the Defendant has been able to demonstrate that the suit patent, on the strength of which the suit has been initiated is vulnerable to revocation, on account of invalidation as demonstrated by decisions from several jurisdictions across the world. The absence of a *prima facie* case would be a fundamental barrier to the grant of an interim injunction.



44. Secondly, the balance of convenience is also tilted heavily in favour of the Defendant, especially considering a situation where there are serious assertions regarding the potential revocation of the suit patent, granting an injunction could unduly prejudice the Defendant. This is particularly relevant if the suit patent is later found to be invalid or revoked, as it would mean that the Defendant was unnecessarily restrained from conducting its business activities.

45. Finally, there is a real possibility of irreparable injury to the Defendant if an injunction is granted in these circumstances. The grant of an injunction based on a potentially revocable or invalid patent could lead to significant losses for the Defendant, which is incapable of being adequately compensated. On the other hand, if the patent is held to be valid after trial monetary amounts can be awarded in the form of damages to the Plaintiff.

46. In *Gujarat Bottling Co. Ltd v. Coca Cola Co. [(1995) 5 SCC 545]*, the Supreme Court categorically held that since the grant of an injunction is wholly equitable in nature, the conduct of parties have a significant bearing on the grant or non-grant of an interim injunction. The relevant extract of decision is as follows:

*“In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the court, and may refuse to interfere unless his conduct was free from blame. **Since the***



relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad-interim or temporary injunction order already granted in the pending suit or proceedings.”

47. Under such circumstances, in terms of the settled legal position, as also the factual matrix of this case, this Court is of the opinion that the Plaintiff is not entitled to any interim injunction, let alone, *ex-parte* or *ad interim* injunction. In addition, the Court is also of the opinion that such conduct cannot be ignored by the Court especially in a case where the Plaintiff ought to come clean and there is specific provisions set out in the various Rules.

48. The Supreme Court in *Kishore Samrite vs. State of U.P. and Ors.*, *MANU/SC/0892/2012* has specifically given guidance on how to approach cases where a party is held to be guilty of suppression and misrepresentation. The relevant extract of the said judgement is set out below:

29. Now, we shall deal with the question whether both or any of the Petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of



the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

(ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

(iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.



(v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

(vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

(viii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it.

[Refer: Dalip Singh v. State of U.P. and Ors. MANU/SC/1886/2009 : (2010) 2 SCC 114; Amar Singh v. Union of India and Ors. MANU/SC/0596/2011 : (2011) 7 SCC 69 and State of Uttaranchal v. Balwant Singh Chaufal and Ors. MANU/SC/0050/2010 : (2010) 3 SCC 402].

49. Accordingly, the interim injunction application is dismissed, subject to payment of Rs.5 lakhs as costs. The total costs shall be deposited within four weeks, in the following manner:

- Rs.2 lakhs shall be deposited with the Delhi High Court Staff Welfare Fund. The details of the Delhi High Court Staff Welfare Fund are as follows:



SB A/c No. 15530110074442
(UCO Bank, Delhi High Court)

- Rs.1 lakh shall be deposited with the Delhi High Court Legal Services Committee and,
- Rs.2 lakhs shall be paid to the Defendant.

50. Ms. Majumder submits that she may be allowed to verify these decisions. If any of the above information or facts captured above, is stated to be incorrect on behalf of the Plaintiff, it may seek revival of the injunction application.

51. List before Court on 10th May, 2024.

PRATHIBA M. SINGH
JUDGE

DECEMBER 14, 2023/dk/am/dn

[Corrected and released on 20th December, 2023]