

Nokia Technologies Oy vs Guangdong Oppo Mobile ... on 6 September, 2023

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 303/2021 & I.A. 14209/2023
NOKIA TECHNOLOGIES OY

Through: Mr. Pravin Anand, Ms. V
Mittal, Mr. Siddhant Ch
Rohin Koolwal, Ms. Shra
Chauhan and Ms. Pallavi
Advocates. (M: 98717363

versus

GUANGDONG OPPO MOBILE TELECOMMUNICATIONS CORP
LTD & ORS.

Through: Mr. Saikrishna Rajagopa
George, Ms. Anu Paarcha
Gadhoke, Mr. Avijit Kum
Vivek Ayyagari, Ms. Sub
Mr. Aniruddh Bhatia, Ms
Miglani, Ms. Stuti Dhya
Sharma and Mr. Nitesh,
(M: 9953781225).

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CS(COMM) 304/2021 & I.A. 14208/2023
NOKIA TECHNOLOGIES OY

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CS (COMM) 303/2021 & connected matters

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CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 06.09.2023

1. This hearing has been done through hybrid mode. CS(COMM) 303/2021 & I.A. 14209/2023 CS(COMM) 304/2021 & I.A. 14208/2023
2. The judgment in the injunction applications in both these matters was reserved on 6th May, 2023.
3. The hearings in these cases had commenced on 5 th April, 2022 and considering that issues of infringement, invalidity, essentiality, FRAND compliance, etc. were all raised, the Court had heard submissions of the parties over a number of hearings. Finally, the judgment was reserved on 6th May, 2023 in the injunction applications.
4. While the Court was hearing submissions in the injunction applications, judgment dated 17th November, 2022 was pronounced by the ld. Single judge in I.A.7700/2021 in CS(COMM) 303/2021 denying the application of the Plaintiff seeking deposit of security. The said suit related to patent numbers IN300066, IN269929, IN286352, IN321300 which are all stated to be Standard Essential Patents (SEP). An appeal against the said judgment was preferred to the ld. Division Bench in FAO(OS)(COMM) 321/2022 titled Nokia Technologies OY v. Guangdong Oppo Mobile Telecommunications Corp. Ltd. & Ors .
5. On 3rd July, 2023, the ld. Division Bench of this Court pronounced the judgement in the appeal. After considering the past license agreement which was entered into between the parties, the ld. Division Bench directed OPPO This is a digitally signed order.

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"103. Keeping in view the status of Oppo as an ex- licensee, its admission that its phones use Nokia's patents, its willingness to renew the 2018 Agreement and make interim payments as late as June 2021, the fact that it has approached a Court in China for determining a FRAND rate as well as the consistent practice of this Court and the financial condition of Oppo, this Court is of the view that the impugned judgment is contrary to the facts as well as settled principles of law. Accordingly, the present appeal is allowed and the impugned order is set aside. This Court also directs

the respondent to deposit the 'last paid amount', attributable to India i.e. Twenty Three per cent (23%) of XXXXXXXXXXXXXXXXXXXXXXXXXX (the last paid amount) under the 2018 Agreement within four weeks. This Court clarifies that the observations made in the present order are only for deciding the present appeal and shall not prejudice either of the parties in any other proceedings or at the final hearing of the suit."

6. The said decision was challenged by the Defendants before the Supreme Court. In SLP(C) No.15938/2023 titled Guangdong Oppo Mobile Telecommunications v. Nokia Technologies OY vide order dated 4th August, 2023 the Hon'ble Supreme Court, rejected the challenge and extended the time to the Defendants to file an undertaking of compliance. The said order of the Supreme Court reads as under:

"1 There is no justification for this Court to interfere with the order of the Division Bench of the High Court. Though the Division Bench reversed the order of the Single Judge, it is an interlocutory order.

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 17:08:55 2 On the request of counsel for the petitioners, time for compliance with the direction of the High Court is extended until 25 August 2023 conditional on the petitioner filing an undertaking before this Court within ten days that they shall comply with the order of the Division Bench.

3 The Special Leave Petition is dismissed, subject to paragraph 2 above.

4 Pending applications, if any, stand disposed of."

7. Thereafter, an undertaking is stated to have been filed in the Supreme Court. The payment has also been made by the Defendant on 22nd August, 2023 to the Id. Registrar General of this Court of a sum of XXXXXXXXXXXXX.

8. The submission on behalf of Id. Counsel for the Plaintiff is that despite the deposit being made, the interim injunction application ought to be still decided by this Court as insofar as the implementation patents i.e., non-SEPs are concerned, Plaintiff enjoys no protection. In addition, it is submitted that the amount that has been directed to be deposited is not the demanded amount by Nokia but the amount in terms of the previous license agreement. Further, it is submitted that the previous license agreement did not cover 5G technologies and thus insofar as 5G is concerned, the Defendants are still not a licensee.

9. On the other hand, Id. Counsel for the Defendants submits that the order of the Id. Division Bench is a pro-tem measure and the amount having been deposited before the Court, the license ought to

be taken as having enured in favour of the Defendant till 30th June, 2024.

10. In addition, he submits that in the earlier license agreement, there was a standstill arrangement qua implementation patents if the license amount is paid.

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11. Heard counsel for the parties. The amount in terms of Id. Division Bench's judgment having now been deposited on 22nd August, 2023, it is directed that the said amount shall be credited into the Id. Registrar General's account after converting the same into Indian Rupees. The entire amount shall be kept in an FDR on auto renewal mode at the best available interest rate.

12. The Id. Registrar General shall file a report before this Court identifying the account number and giving details of the FDR which has been created so that the same can be part of this Court's record as well.

13. Insofar as the question as to whether the pro tem arrangement which has been directed by the Id. Division Bench would cover all aspects of the injunction application or not, there can be no doubt that the issues of invalidity, essentiality, infringement, the question of deposit in terms of the demanded amount of Nokia, as also the coverage of 5G technologies was not subject-matter of the application for pro-tem payment which was considered before the Ld. Division Bench.

14. In view of the fact that the hearings and the submissions even at the interim injunction stage have been extremely detailed as also technical in nature and since there is some security now in terms of the Id. Division Bench's order for the Plaintiff as well the deposits made, the Court has put to the Id. Counsels as to whether the following course of action would be acceptable to the parties:

i) The suits shall now proceed to trial with issues being framed in the matter. In the trial, both the parties shall restrict their evidence to two witnesses each (one technical and one non-technical/FRAND) on all aspects that arise in these suits.

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ii) The evidence would be recorded before the Court by adopting live transcription which would result in speedier recording of cross- examination.

iii) The matter shall be kept as part-heard before this Court.

15. Ld. counsel for both the parties submit that they would wish to seek instructions from their respective clients. Let them do so.

16. List on 6th October, 2023.

17. The present order shall be uploaded only after redacting the financial information.

18. In view of the order passed today, the judgment in the interim injunction application shall not be treated as reserved at this stage and is de- reserved.

PRATHIBA M. SINGH, J SEPTEMBER 6, 2023 Rahul/sk This is a digitally signed order.

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