

# Unilin Beheer B.V vs Balaji Action Buildwell on 26 February, 2020

**Author: Rajiv Sahai Endlaw**

**Bench: Rajiv Sahai Endlaw**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 1683/2016

UNILIN BEHEER B.V.

Through:

..... Plaintiff  
Mr. Pravin Anand, Mr. Dhruv Anand,  
Ms. Udit M. Patro and Ms. Kavya  
Mammen, Advs.

Versus

BALAJI ACTION BUILDWELL

..... Defendant  
Through: Mr. Chander M. Lall, Sr. Adv. with  
Ms. Nancy Roy and Mr. Sanuj Das,  
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW  
ORDER

% 26.02.2020 IAs No.8906/2019 & 8907/2019 (both of plaintiff u/S 151 CPC)

1. The counsel for the plaintiff states that both these applications are now infructuous.
2. The applications are disposed of.

CS(COMM) 1683/2016 & CC(COMM) 38/2018 & IAs No.13688/2017 (of plaintiff u/S 151 CPC) & 13689/2017 (of defendant u/O XI R-1,3&5 CPC)

3. The suit and the Counter-Claim are ripe for framing of issues and the counsel for the plaintiff as well as the senior counsel for the defendant have handed over proposed issues, which are taken on record.
4. On the pleadings of the parties, the following issues are framed:

(I) Whether the defendant has infringed the plaintiff's patent bearing No.193247, during the period of its validity? OPP (II) Whether the plaintiff's patent bearing No.193247 was liable to be invalidated on the grounds set out in the Counter-Claim during the term of its validity? OPD (III) If Issue Nos.(I) & (II) are decided in favour

of the plaintiff, whether the plaintiff is entitled to any damages and if so, in what amount? OPP (IV) Relief.

5. No other issue arises or is pressed.
6. The parties to file their list of witnesses within fifteen days.
7. The plaintiff to file affidavits by way of examination-in-chief of its witnesses within six weeks.
8. Option given of having evidence recorded on commission has been accepted by the counsel for the plaintiff and the counsel for the plaintiff also states that all the expenses of the commission shall be borne by the plaintiff, subject to the final outcome of the suit.
9. Commission is issued to Mr. Kamlesh Kumar, Additional District Judge (Retd.) (Mob.9971208844) to record evidence in the suit. He is requested to record the evidence within the Court Complex and to complete the same within six months from the date of first appearance of the parties before him. He is granted liberty to have the matter placed before the Court, if any of the party is found delaying recording of the evidence.
10. The fee of the Commissioner is fixed at Rs.1 lac, besides out of pocket expenses, initially to be paid by the plaintiff and subject to the final outcome of the suit as to costs.
11. The Registry is directed to send the file of the suit at the place and time fixed by the Commissioner for recording of evidence.
12. The parties to appear before the Commissioner, with prior appointment, within eight weeks herefrom, for commencing the recording of evidence.
13. List before the Court after recording of evidence is completed.
14. The counsel for the plaintiff states that joint schedule of documents is still to be filed and a date be fixed before the Joint Registrar for putting up the exhibit marks on the documents. However, it is often found that when such exhibit marks are put, the affidavits by way of examination-in-chief of the witnesses are filed with the exhibit marks in chronology and which are different from exhibit marks put pursuant to admission/denial of documents and a date or more are wasted on the said ground. It is therefore deemed appropriate that the exhibit marks are put on the documents as per the affidavits by way of examination-in-chief of the witnesses. Needless to state that whatsoever documents have been admitted, the admitting party would not be entitled to contest admission into evidence of the said document/s.
15. At this stage, the counsel for the plaintiff states that IA No.13688/2017 for constitution of a Confidentiality Club and IA No.13689/2017 for discovery are also pending consideration.

16. On enquiry, whether any documents have been filed in a sealed cover, it is stated that no documents have been filed in sealed cover but in IA No.13688/2017 itself, there is a prayer for permission to file confidential documents in a sealed cover.

17. The senior counsel for the defendant states that IA No.13688/2017 was filed after more than eight months of the filing of the written statement, by when the time for filing the documents was over.

18. In the guise of such an application as IA No.13688/2017, a backdoor for late filing of documents, cannot be opened. The plaintiff was required to file the documents, even if confidentiality was claimed with respect thereto, along with the plaint and the application should have been pressed prior to framing of issues.

19. The documents with respect to which confidentiality is claimed are stated to be the agreements under which the plaintiff granted licence to others to work the patent and contains the quantum of royalty which the plaintiff was receiving under the said agreements.

20. The senior counsel for the defendant has drawn attention to Section 69 of the Patents Act, 1970, particularly to Sub-section (1), Sub-section (2) and Sub-section (5) thereof and has contended that thereunder, the licence, without being registered with the Controller of Patents, is inadmissible in evidence.

21. IA No.13688/2017 does not plead that any certificate of such registration of the licenses sought to be filed, is also being filed or exists.

22. The counsel for the plaintiff contends that under Section 69(5) of the Patents Act, the Controller of Patents or the Court is empowered to direct such licences to be admissible as evidence. It is argued that the licences be taken on record and as and when the stage of tendering the same into evidence will arise, the plaintiff will inform whether the licenses are registered or not or seek appropriate direction. It is contended that at this stage only the licences have to be taken on record.

23. I have enquired from the counsel for the plaintiff, whether not the reason for the Controller of Patents to exempt registration of the licence is required to be in writing and would be available and if so, whether not the plaintiff should bring it on record now rather than deferring the filing of the same, without which the documents sought to be filed under the said application are of no avail.

24. It has also been enquired, whether the licenses are registered or not.

25. The counsel for the plaintiff states that he has to check.

26. The senior counsel for the defendant states that all records are available online and the defendant, on checking has not found any licences to be registered or any order of the Controller of Patents exempting registration of the licences.

27. The counsel for the plaintiff states that the plaintiff can also seek direction of the Court to permit licences without registration to be tendered in evidence.

28. It is this which causes delays in disposal of suits. The plaintiff has to disclose today, the reason if any why, notwithstanding the licences being not registered, they can be admitted into evidence, inasmuch as the Court's resources are not to be wasted on dealing with the matter in piecemeal and if the plaintiff is unable to today satisfy the Court, there is no reason why the licences should not be refused to be taken on record today itself rather than deferring it to another day.

29. It is also the contention of the senior counsel for the defendant that under Order XI Rule 5 of the Amended Civil Procedure Code, 1908 applicable to the commercial suits, the plaintiff is not entitled to rely on documents which were in power and possession of the plaintiff and not disclosed along with the plaint.

30. The counsel for the plaintiff states that there is a reference to the licences in the plaint itself.

31. The counsel for the plaintiff seeks time to argue further on another day.

32. On enquiry, whether the plaintiff wants to file affidavits by way of examination-in-chief in the interregnum, the counsel for the plaintiff states that he will take a call on that as well.

33. List on 8th May, 2020, for hearing arguments on IAs No.13688/2017 & 13689/2017.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 26, 2020 „bs ..