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BAJAJ AUTO LIMITED
v.
TVS MOTOR COMPANY LTD.
(Civil Appeal No. 6309 of 2009)

B

SEPTEMBER 16, 2009

**[MARKANDEY KATJU AND ASOK KUMAR
GANGULY, JJ.]**

Code of Civil Procedure, 1908:

C

O.17,r.1(2), proviso (a) – Adjournment of hearing – Suit filed alleging infringement of patent – Interim injunction granted by single Judge of High Court – Appeal against interim order allowed by Division Bench of High Court –

D

Matter reached Supreme Court – Suit still pending – HELD: After commencement of hearing of suits in matters relating to patents, trade-marks, copyrights, proviso (a) to sub-rule (2) of r.1 should be strictly complied with and hearing of suit in such matters should proceed on day-to-day basis and final

E

judgment should be given normally within four months from the date of filing of the suit – In the instant case, although arguments were advanced at some length, instead of deciding the case at interlocutory stage, the suit itself should be disposed of finally at a very early date – It is, therefore,

F

directed that the defendant would file written statement as indicated in the order and the High Court would commence the hearing of the suit on day-to-day basis – Interim orders passed by Supreme Court are vacated and substituted by the directions given in the order – Indian Patents Act, 1973 – Suits

G

– Hearing of suits relating to patents, trade-marks and copyrights – Practice and Procedure.

M/s Shree Vardhman Rice and General Mills vs. M/s

H

Amar Singh Chawalwal SLP(C) No. 21594 decided by Supreme Court on 7.9.2009, relied on. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6309 of 2009.

From the Judgment & Order dated 18.5.2009 of the High Court of Judicature at Madras in O.S.A. No. 92 of 2008. B

WITH

C.A. No. 6310 of 2009. C

H.N. Salve, R.F. Nariman, Mahesh Agarwal, Rishi Agrawala, A.A. Mohan, Shiraj Dhure, Purnima Bhat for the Appellant. D

Shanti Bhushan, Dr. A.M. Singhvi, Gopal Jain, Priyanjali Yadav, Anusuya Sandhu Sinha, Shiraz Contractor Patodia, Ankur Chawla, Pallavi Langor, Amrita Bhattacharya (for "Coac") for the Respondent. E

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. Leave granted.

2. This Appeal has been filed against the impugned order of the Division Bench of the High Court of Judicature at Madras dated 18.5.2009 in O.S.A. No. 92 of 2008. F

3. It appears that a suit bearing No. C.S. No.1111 of 2007 had been filed by the appellant herein before the learned Single Judge of the Madras High Court alleging infringement of its patent No.195904 under the Indian Patents Act, 1973 (for short 'the Act'). G

4. The learned Single Judge granted an interim injunction H

A on 16th February, 2008.

5. Challenging the said interim order dated 16th February, 2008, an appeal was filed by the respondent-defendant before the Division Bench of the Madras High Court which allowed the
B appeal by the impugned order dated 18.5.2009.

6. Hence, this appeal before us by special leave.

C 7. It is evident that the suit is still pending before the learned Single Judge of the Madras High Court. We are unhappy that the matter has been pending in the High Court at the interlocutory stage for such a long time as the suit was filed in December, 2007 and yet even written statement has not been filed.

D 8. Recently, we have held in Special Leave Petition(C) No.21594 of 2009 decided on 07th September, 2009 in the case of *M/s. Shree Vardhman Rice & Gen Mills vs. M/s Amar Singh Chawalwala* as follows:

E "...Without going into the merits of the controversy, we are of the opinion that the matters relating to trademarks, copyrights and patents should be finally decided very expeditiously by the Trial Court instead of merely granting or refusing to grant injunction. Experience shows that in the
F matters of trademarks, copyrights and patents, litigation is mainly fought between the parties about the temporary injunction and that goes on for years and years and the result is that the suit is hardly decided finally. This is not
G proper.

Proviso (a) to Order XVII Rule 1(2)C.P.C. states that when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in
H attendance have been examined, unless the Court finds

that, for exceptional reasons to be recorded by it the adjournment of the hearing beyond the following day is necessary. The Court should also observe clauses (b) to (e) of the said proviso. A

In our opinion, in matters relating to trademarks, copyright and patents the proviso to Order XVII Rule 1(2) C.P.C. should be strictly complied with by all the Courts, and the hearing of the suit in such matters should proceed on day to day basis and the final judgment should be given normally within four months from the date of the filing of the suit." B C

9. As has been observed by us in the aforesaid case, experience has shown that in our country, suits relating to the matters of patents, trademarks and copyrights are pending for years and years and litigation is mainly fought between the parties about the temporary injunction. This is a very unsatisfactory state of affairs, and hence we had passed the above quoted order in the above-mentioned case to serve the ends of justice. We direct that the directions in the aforesaid order be carried out by all courts and tribunals in this country punctually and faithfully. D E

10. In the present case, although arguments were advanced at some length by the learned counsel for both the parties, we are of the opinion that instead of deciding the case at the interlocutory stage, the suit itself should be disposed of finally at a very early date. F

11. Hence, without going into the merits of the controversy, we direct the respondent-defendant to file written statement in the suit, if not already filed, on or before the last date for closing of the Madras High Court for Dussehra holidays. We would request the learned Single Judge who is trying the suit to commence the hearing of the suit on the re-opening of the H

A Madras High Court after Dussehra holidays and then carry it on a day to day basis. No adjournment whatsoever ordinarily will be granted and the suit shall be finally disposed of on or before 30th November, 2009.

B 12. The interim orders of this Court dated 08th June, 2009 and 31st August, 2009 are vacated and substituted by the following directions.

C 13. The respondent shall be entitled to sell its product but it shall maintain an accurate records/accounts of its all India and export sales. We are appointing a Receiver to whom the records of such sale shall be furnished every fortnight by the respondent and the same shall be signed and authenticated by a responsible officer of the respondent. A copy of the same shall be given to the appellant also. We are requesting the Hon'ble the Chief Justice of the Madras High Court to forthwith nominate a Receiver in the matter to whom the sale records/accounts will be submitted by the respondent fortnightly, and the Receiver will verify the said sale records/accounts and thereafter submit his Report to the learned Bench of Madras High Court where the suit is pending. A copy of the same will be sent to the parties also. This direction will continue till the pendency of the suit. The remuneration of the Receiver will be fixed by the Hon'ble Chief Justice.

F 14. We make it clear that we are not making any observations on the merits of the case. The learned Single Judge shall decide the suit without being influenced by this order or by any observations made in the impugned order of the Division Bench or in the order of the learned Single Judge granting temporary injunction in favour of the appellant herein.

H 15. The Secretary General of this Court is directed to send a copy of this judgment forthwith to the Registrar General of the Madras High Court who shall place the same before Hon'ble

the Chief Justice for obtaining the appropriate directions. A

16. Copy of this order be given to the parties today itself.

17. The Appeal is disposed of accordingly. No costs.

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@ S.L.P.(C) No.14039 of 2009

18. Leave granted.

19. In view of our judgment in Civil Appeal arising from S.L.P.(C) No.13933 of 2009, this appeal is also disposed of on the same terms. No costs. C

R.P.

Appeal disposed of. D