

Micromax Informatics Limited vs.telefonaktiebolget L M Ericsson

Micromax Informatics Limited vs.telefonaktiebolget L M Ericsson

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Court : Delhi

Decided On : Dec-04-2017

Appellant : Micromax Informatics Limited

Respondent : Telefonaktiebolget L M Ericsson

Judgement :

§~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + FAO(OS) (COMM) 169/2017 & CM No.40001/2017 MICROMAX INFORMATICS LIMITED

Appellant Date of Decision:

04. 12.2017 Through: Mr. S. Ganesh, Sr. Adv. with Mr. Ashok K. Aggarwal, Mr. Samrat Nigam, Ms. Radhika, Ms. Snigdha Sharma, Ms. Ritwik Sneha & Mr. Gaurav Priyadarshi, Advs. versus TELEFONAKTIEBOLGET L M ERICSSON Respondent Through: Mr. C.S. Vaidyanathan, Sr. Adv., Mr. C.M. Lall, Sr. Adv. with Ms. Saya Choudhary, Mr. Prateek Sehrawat, Mr. Adithya Jayaraj, Mr. Rupin Bahl, Ms. Karunka Kanwar, Mr. Devanshu Khanna & Mr. Ujjwal Sinha, Advs. Ashutosh Kumar, CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE SANJEEV SACHDEVA S. RAVINDRA BHAT, J.

1. On the previous date of hearing, learned senior counsel appearing for the parties were requested to explore the possibility of considering use of the hot tub procedure, devised by Courts abroad, to facilitate appreciation of expert technical evidence, in a shortened procedure. The plaintiffs FAO(OS)(COMM)169/2017 Page 1 counsel was agreeable. Learned counsel for the appellant submitted that

in principal there can be no objection to the adoption of such procedure. He, however, highlighted certain difficulties and stated that the hot tub procedure pre-supposes the meeting of the concerned experts before the commencement of trial with the aim of narrowing the differences, in the form of a commonly issued document or separately summarized versions of it. Such outcomes would be preceded by candid discussion between the experts inter se resulting in the drawing up of those documents to assess a faster outcome of the merits in a suit. It was submitted that in the present case, on account of the appellants broad acceptance of the idea indicated in the order of this Court of 21.04.2017, in FAO(OS)(COMM) No.54/2017 and FAO(OS)(COMM) No.89/2017 also between the very same parties to the present appeal, the experts rival positions would already be a matter of record. Learned counsel for the plaintiff/respondent submitted that this factual circumstance need not, in any manner, be a hindrance for the objective consideration of the experts views. It was submitted that discussions would be off the record; however, the outcomes would be in the form of a common document or simplified statements.

2. This Court is of the opinion that the modified hot tub procedure, given the realities of the present case and the progress of the suit, may be suitably devised by the Single FAO(OS)(COMM)169/2017 Page 2 Judge. This Court proposes to discuss the issue in its judgment, in greater detail. The Court would in its final order make suitable directions in this regard.

3. Learned senior counsel Mr. S. Ganesh, on instructions, indicates that the following three broad points/features are acceptable to M/s Micromax Infomatics. The three features have been crystallized in the form of a note which are extracted as follows:-

"1. This Honble Court in F.A.O. (O.S.) (COMM) 54/2017 and F.A.O. (O.S.) (COMM) 89/2017, between the same parties, passed following order on 21.04.2017: the CORAM: HONBLE MR. JUSTICE S. RAVINDRA BHAT HONBLE MR. JUSTICE YOGESH KHANNA

ORDER

2104.2017 the proceedings, During the course of hearing the Court suggested to learned counsel for parties that for the purpose of expediting the consolidation of Telefonaktiebolaget L M Ericsson (PUBL) vs. Mercury Electronics & Ors CS (Comm) No.155/2017 with Telefonaktiebolaget L M Ericsson (PUBL) vs. Lava International Ltd CS (Comm) No.1148/2016 may be considered. As a part of the suggestions, the plaintiff may adopt its evidence the and defendant/appellant in the later suit i.e. Micromax. previous suit the led in FAO(OS)(COMM)169/2017 Page 3 The Court is of the opinion that plaintiffs evidence in Lava case may be treated as evidence in the suit involved in the present appeal i.e. Micromax with the briefest supplementary evidence and any other such additional / supplementary evidence may be subjected to the cross- examination to prove infringement; and likewise the defendant / Micromax may lead such evidence over and above Lavas case as it deems necessary to address the issue arising out of the defence and counter claim. in the order In deference of the opinion expressed by this Honble Court the Appellant/Defendant is agreeable to adopt the evidence in the Lava case as evidence in the instant suit and so also the objections raised therein. Micromax may not be held bound by concessions given by lava. 21.04.2017, dated 2. Having regard to the evidence already on record, any other additional / supplementary evidence confined to the pleadings and permitted to the Parties by the Ld. Single Judge may be subjected to the cross-examination.

3. This Honble Court may fix a specific time schedule to be followed by both parties to conclude recording of such additional/supplementary evidence as may be necessary. 4. Learned senior counsel for the plaintiff Mr. C.S. Vaidyanathan submits that the above three points, which would reduce the time duration of the trial, are acceptable to the plaintiff. It is submitted that the consent of M/s Lava International Ltd. would be necessary in this regard, for the adoption of the agreed procedure, indicated by the appellant. It is also submitted that the third party licence agreements relied FAO(OS)(COMM)169/2017 Page 4 upon by the plaintiff would be supplied, duly redacted, to the appellants nominees in a confidentiality club.

5. These materials and any other such material which is sought to be brought on record or furnished to the appellant by the plaintiff would be subject to the

provisions of the Commercial Courts Act, 2015 and their admissibility under the provisions of the Act.

6. It is clarified that such additional evidence, would be a matter of record in the suit between Telefonaktiebolaget L M Ericsson (PUBL) and Lava International Ltd. [CS (COMM) No.1148/2016].. The parties agree that the following rules would govern the confidentiality club in the ongoing suit:-

"(i) All confidential license agreements relating to similarly placed parties be permitted to be filed in a sealed cover and be kept in the safe custody of the Registrar General; (ii) Each party be directed to provide on an affidavit, a list of no more than four lawyers (who are not and have not been in-house lawyers of one of the parties) and no more than two external expert witnesses, who alone will be entitled to see the aforesaid confidential documents/patent license agreements; (iii) Said lawyers and expert witnesses will be bound by confidentiality orders passed by this Honble Court and will not make copies or disclose the contents of the said aforesaid confidential documents/patent FAO(OS)(COMM)169/2017 Page 5 license agreements to anyone else or anywhere else, including in other legal proceedings, oral and the press, blog written communications publications etc., so the confidentiality regime would be preserved; the spirit of that to (iv) The parties i.e. the Plaintiff and the Defendant No.2 will be allowed to inspect said patent license agreements only through the confidentiality club members & no copies will be made of such confidential documents/license agreements. After the confidential documents / patent license agreements be resealed and again deposited with the Ld. Registrar General of this Honble Court; inspection, aforesaid the (v) Direct that during recordal of evidence w.r.t. aforesaid confidential documents / patent license agreements etc. only members of the confidentiality club shall be present; (vi) The proceedings of this Honble Court, when the said documents are being looked at, would be in camera to the effect that only members of the confidentiality club be permitted to be present. (vii) The Plaintiff would give copies of the aforesaid confidential documents / patent license agreements to the members of the confidentiality club only after redacting the confidential information including the name of the parties. However, the rates will not be redacted. FAO(OS)(COMM)169/2017 Page 6 terms (viii) Any evidence by way of affidavit

contain / / witness aforesaid statement which may confidential of the information agreement(s) shall be kept in a sealed cover and would only be accessible to the members of confidentiality club. However, a party filing such evidence by way of affidavit would give to the opposite party a copy of such affidavit after redacting the confidential information / terms of the agreement(s); 7. Parties have concluded their submissions with respect to the merits of FAO(OS)(COMM) No.169/2017.

8. Order reserved.

9. All rights and contentions of the parties are reserved.

10. Interim order shall continue until further orders. DECEMBER04 2017 kks S. RAVINDRA BHAT, J SANJEEV SACHDEVA, J FAO(OS)(COMM)169/2017 Page 7

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