

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **Pronounced on: 15<sup>th</sup> February, 2022**  
+ **CS(COMM) 383/2020**

**KONINKLIJKE PHILIPS N.V.** .....Plaintiff

Through: Mr. Chander Lall, Sr. Adv. with  
Mr. Ashutosh Kumar, Mr. Swamil  
Dey, Ms. Vrinda Bagaria, Mr.  
Munesh Sharma, Mr. Vinod  
Chauhan & Ms. Ananya Chugh,  
Advs.

Versus

**VIVO MOBILE COMMUNICATION CO. LTD. & ORS.**

.....Defendants

Through: Mr. Saikrishna Rajagopal, Ms.  
Julien George, Ms. Anu Paarcha,  
Mr. Arjun Gadhoke, Mr. Avijit  
Kumar, Mr. Aniruddh Bhatia, Mr.  
Skanda Shekhar, Ms. N. Parvati  
& Mr. Vivek Ayyagari, Advs. For  
D-1&D-2.  
Ms. Nupur Aggarwal & Mr.  
Maanav Kumar, Advs. for D-3.

**CORAM:**  
**HON'BLE MS. JUSTICE ASHA MENON**

### **ORDER**

**REVIEW PET. 24/2022 (by defendant no.1&2 under Section 114  
r/w Order XLVII Rule 1 and Section 151 CPC against the order  
dated 07.01.2022 passed by this Hon'ble Court)**

1. This review petition has been filed by the petitioners/defendants  
No.1&2 against the order dated 7<sup>th</sup> January, 2022. The

petitioners/defendants No.1 and 2 have submitted that the order of this Court dated 7<sup>th</sup> January, 2022, allowing in part the application being I.A. 3048/2021 moved by the respondent/plaintiff under Order XI Rules 2 and 14 of the Code of Civil Procedure, 1907 ('CPC' in short), was liable to be reviewed, as erroneous directions have been issued on the basis of an erroneous understanding of the facts in the matter.

2. I have heard submissions of Mr. Saikrishna Rajagopal, learned counsel for the petitioners/defendants No.1&2 and Mr. Chander Lall, learned senior counsel for the respondent/plaintiff and have considered the written submissions filed by both sides. Though a hearing in review is not a routine procedure, counsel have been heard at length and the written submissions considered.

3. The contentions, as recorded in the written submissions, are briefly as under :-

(i) The petitioners/defendants are gravely aggrieved by the directions issued by this Court to produce their third-party agreements, since the findings, on the basis of which, the directions have been issued, are contrary to the submissions made by both the parties and the facts on the record.

(ii) The reasoning given by this Court in para Nos.14 & 15 for necessitating the production of the petitioners'/defendants' agreements are erroneous and contrary to the record.

(iii) This Court had failed to appreciate that whether the suit patents are implemented as the chipset or handset level can be better understood by the agreement between the plaintiff and Qualcomm which is already on record and the production of the

petitioners'/defendants' agreements was wholly unnecessarily, since, they did not relate to the suit patents in any manner.

(iv) This Court erred in holding that the petitioners'/defendants' agreements would be able to establish whether the respondent's/plaintiff patents are Standard Essential Patents ("SEPs"), as this understanding runs contrary to the settled law that essentiality of a patent can only be ascertained by comparing the features of the asserted claim of the patent with the portions of the asserted standard.

(v) It is not even the respondent's/plaintiff's case that the petitioners'/defendants' agreements have any bearing on the issue of the essentiality of the suit patents. Thus making the observation in para 15 of the order erroneous.

(vi) The Court erred in not appreciating that it is an admitted position that the petitioners'/defendants' agreement with Qualcomm and other third-parties has nothing to do with the suit patents and that it is neither party's claim that these agreements in any manner relate to the suit patents.

(vii) The Court erred in observing that I.A. 8259/2020 had been moved by the petitioners/defendants, as the same had been moved by the respondent/plaintiff.

(viii) Since the Court had rightly rejected the interrogatories (c) and (d), the Court erred in seeking production of the very same agreements, for if, the interrogatories were irrelevant, there could be no basis to hold that the petitioners/defendants' agreements would be relevant to the *lis*.

(ix) The Court erred in directing the production of documents which were not relevant to ascertain where the suit patents are being implemented and neither party was relying upon the same to substantiate their respective claims, as the respondent/plaintiff was only seeking to gain access to otherwise confidential documents they were not entitled to be privy to.

Thus, it was prayed that the order dated 7<sup>th</sup> January, 2022 be reviewed and the relief for production of documents, as sought by the respondent/plaintiff in I.A. 3048/2021, be rejected.

4. Mr. Saikrishna Rajagopal, learned counsel for the petitioners/defendants No.1 & 2, urged that para No.14 of the order dated 7<sup>th</sup> January, 2022, is to be seen in the context of para No.10 of the reply of the petitioners/defendants and, the rejoinder of the respondent/plaintiff thereto, which, clearly established that the agreements have no relevance to decide where the technology lies. There was enough material on the record to determine what patents are there on the chipset, when the respondent/plaintiff itself had claimed in the rejoinder that there was cogent evidence placed by it to show that the patent was in the handset. It was an error to direct the production of the documents that were irrelevant. The court could not facilitate a fishing expedition and a roving inquiry to find out what others were charging. It is claimed that the petitioners/defendants are using different patents. It may be mentioned here that the learned counsel took the Court through these pleadings to substantiate these contentions.

5. Mr. Chander Lall, learned senior counsel for the respondent/plaintiff, on the other hand, submitted that all arguments

raised are of a nature, relevant for the hearing of an appeal. It is further submitted that under the Commercial Courts Act, 2015, all documents, not only those supporting of the case of a party but those required to destroy the other's case could also be called for. Thus, since it was the case of the petitioners/defendants that the "suit patents" were at the chipset level, as disclosed in their written statement, the respondent/plaintiff was seeking to destroy the stand of the petitioners/defendants by production of third-party agreements relating to the chipset. These contentions have been reproduced in the reply filed by the petitioners/defendants to the plaintiff's application i.e. I.A. 3048/2021.

6. It was submitted that the production would help to determine the truth of the claims of the petitioners/defendants and that the directions were rightly issued. Therefore, learned senior counsel submitted that the application be dismissed with costs. It may be noted here that in the written submissions, a chart has been filed on behalf of the respondent/plaintiff to show the pleadings and the directions of the Court. Several judgments have also been filed which relate to interrogatories as also on the relevancy of the documents sought to be produced, including to meet the allegations of the petitioners/defendants of acquiescence and exhaustion and non-compliance of Fair, Reasonable and Non-Discriminatory (FRAND) by the respondent/plaintiff.

7. In rejoinder, learned counsel for the petitioners/defendants No.1 & 2, had submitted that para 14 of the order dated 7<sup>th</sup> January, 2022 does not deal with exhaustion of patents as that is not the logic of the order. Moreover, the arguments of exhaustion of the patents, as advanced on

behalf of the petitioners/defendants, were not based on their third-party agreements and that the respondent/plaintiff would be need to show that the patents are the same. It was submitted that the error is apparent in para 14, when this Court observed that the production of the documents were necessary to know where the patents were i.e., whether in the chipset or in the handset.

8. It was also submitted in the written submissions that the respondent/plaintiff cannot use this opportunity to expand on arguments that did not even form the basis of the order. At the same time, it is submitted that this Court had rightly held that the petitioners'/defendants' agreements were not relevant for determining the issue of exhaustion. It was submitted that the petitioners/defendants were not placing any relevance on their agreements to substantiate the assertion of acquiescence and thereby exhaustion. The petitioners/defendants were relying on the respondent's/plaintiff's agreement with Qualcomm in this regard. It has been reiterated that when there was no dispute regarding whose chipset was being incorporated in the petitioners'/defendants' devices, there was no need to seek production of the petitioners'/defendants' agreements with Qualcomm or the other third parties.

### **DISCUSSION**

9. The arguments, as submitted orally and in writing, have been extensively referred to in this order only to underline the fact that the submissions made are on the merits of the application of the respondent/plaintiff being I.A. No.3048/2021.

10. The scope of a review is extremely limited. The learned counsel for the petitioners/defendants No.1 & 2 though has contended that there are errors on the face of the order, at the same time, has referred to other paragraphs of the same order to question the observations in para 14 and further has taken the Court back to the pleadings in the written statement, replication, application, reply and rejoinder. In other words, clearly, the error that the petitioners/defendants No.1 & 2 are seeking to establish in the order, seems to require the court to delve into the materials, apply its mind afresh after re-evaluating the materials and further, decide the application being I.A. No.3048/2021 now in favour of the petitioner/defendant, by dismissing it. The learned senior counsel for the respondent/plaintiff is right in his submission that such a course of action would be relevant in an appeal.

11. The Supreme Court in various judgments has repeatedly held that the jurisdiction of review is not that of an appeal. An error which is not self-evident and has to be detected by a process of reasoning cannot be described as an error apparent on the face of the record, justifying the court exercising its power of review. Neither can a petitioner seek in a review, the same relief which had been sought at the time of arguing of the main matter and which had been rejected. Fresh and additional material cannot be pressed into service to seek a review of an order. Minor mistakes of inconsequential importance are insufficient to seek a review. Only when circumstances of a substantial and compelling character make it necessary to do so, can review be sought. The normal principle is that what is pronounced by the court is final, else, there must be some manifest wrong caused leading to miscarriage of justice. In

particular, while seeking review of orders passed in a civil suit, the grounds mentioned in Order XLVII Rule 1 of the CPC have to be satisfied, which would not equate the hearing with the original hearing of the case or a hearing in an appeal. Even where the view adopted by the court is a possible view that can be taken, it would not be a case of an error apparent on the face of the record.

12. It is also settled law that a review can by no means an appeal in disguise where an erroneous decision is reheard and corrected, as has been sought to be urged in the present matter. Throughout, the emphasis has been on the erroneous understanding of the pleadings of the parties, which, has resulted in erroneous conclusions, resulting further in erroneous decisions. A rehearing is not possible to correct all these “errors”. Such a re-hearing and re-appraisal of the material on record including pleadings, would fall within the scope of an appeal and not review. “Error” has to be an error apparent on the face of the record to attract the provisions of Order XLVII Rule 1 of the CPC and must be a patent error which alone can be looked into in review proceedings. This view has been taken by the Supreme Court in *Thungabhadra Industries Ltd. v. Govt. of A.P.*, (1964) 5 SCR 174.

13. It would be useful to reiterate the summary of principles governing review petitions as laid down in *Kamlesh Verma v. Mayawati*, (2013) 8 SCC 320, which are as follows:

*Summary of the principles*

*20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:*

*20.1. When the review will be maintainable:*

*(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*

*(ii) Mistake or error apparent on the face of the record;*

*(iii) Any other sufficient reason.*

*The words “any other sufficient reason” have been interpreted in Chhajju Ram v. Neki [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. [(2013) 8 SCC 337 : JT (2013) 8 SC 275]*

*20.2. When the review will not be maintainable:*

*(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*

*(ii) Minor mistakes of inconsequential import.*

*(iii) Review proceedings cannot be equated with the original hearing of the case.*

*(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*

*(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*

*(vi) The mere possibility of two views on the subject cannot be a ground for review.*

*(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.*

*(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*

*(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.*

Keeping the above principles in mind, it is clear that this is not a case where any interference is called for exercising review jurisdiction. The grievance of the petitioners/defendants No.1&2 being fundamentally that the Court had fallen into error on account of the misunderstanding of the pleadings, review would not be maintainable under clause (v) and clause (viii) would also be attracted. The same relief having been sought in this review petition, namely, the rejection of the prayer of the respondent/plaintiff to produce the documents, is also hit by clause (ix) hereinabove.

14. In the light of the foregoing discussions, there being no merit in the review petition, the same is dismissed.

15. No order as to cost.

16. Before parting, it be noted that I.A. No.8259/2020 has been moved by the plaintiff and not by the defendants.

17. The order be uploaded on the website forthwith.

**(ASHA MENON)**  
**JUDGE**

**FEBRUARY 15, 2022**

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