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BRITISH INDIA BANKING AND INDUSTRIAL CORPORATION, LTD. *In re.* VITHALDAS DHANJI & CO. *v.* SHIVA CHIDUMBARIAH

Kania J.

In my opinion the application must fail. The proper remedy of the assignees is to proceed as provided under section 160, viz., to take proceedings to recover the amount in a due course of administration of the estate of the deceased. The application is, therefore, dismissed. As, however, the present application fails on a point of law, which is not covered by any authority, I think the applicant should not be made liable to pay the costs. Under the circumstances, I make no order as to costs. Counsel certified.

Attorneys for applicants: Messrs. *Mulla & Mulla.*

Attorneys for respondent: Messrs. *Desai & Co.*

Application dismissed.

B. K. D.

ORIGINAL CIVIL.

Before Mr. Justice Kania.

1934
August 23

THE INDIAN CASABLANCAS HIGH DRAFT COMPANY *v.* THE MILLOWNERS' ASSOCIATION OF AHMEDABAD.*

Practice and Procedure—Indian Patents and Designs Act (II of 1911), section 15—Patentee's petition to extend term of patent—Reference of petition to High Court—Procedure—Additional grounds of objection—Whether can be allowed to be put in.

If a petition for extension of term of a patent which has been presented to the Governor-General in Council, has been referred to the High Court for its decision under the provisions of section 15(3) of the Indian Patents and Designs Act (II of 1911), the Court should deal with the original petition, and it is not necessary to file a fresh petition.

On such a reference, the petition becomes a judicial proceeding and the Court has jurisdiction to allow the objectors to file further grounds of objection to the petition, provided that the same can be done according to the law relating to the amendment of pleadings.

When an extension of a patent is asked for, it is legitimate for the Court to inquire what profits the inventor had made since the registration of the patent and the inquiry

*Miscellaneous Petition No. 12 of 1934.

need not be limited to what the inventor earned in his own country, but might include profits made by him in all countries where the invention was registered or exploited.

In re Bower-Barff Patent[1] and *In re Adair's Patent*,[2] followed.

PETITION to extend the term of a patent.

A company called the Hilaturas Casablancas S. A. was formed in Spain for owning, exploiting and working a system known as "Casablancas High Draft Spinning System". The system consisted in producing a better yarn of a coarser weaving, which improved the quality of the weavings and simplified the process of preparing the cotton slivers before being spun.

The petitioners were an Indian Company registered on November 1, 1928. They on November 9, 1928, entered into an agreement with the Spanish Company and acquired rights in certain of their patents by paying them a sum of £20,000 and a royalty of eight annas per spindle converted by them.

Among the patents acquired by the petitioners was one Numbered 3294/17 for improvements in and relating to mechanism for drawing fibres with endless belts. The term of this patent was to expire on September 18, 1933.

On January 10, 1933, the petitioners, acting under section 15 of the Indian Patents and Designs Act (II of 1911) applied to the Governor-General in Council, for extending the patent for a further term of fourteen years. This application was duly advertised in the newspapers.

Several persons and Associations, including the Ahmedabad Millowners' Association, gave notice of objection to the extension to the Controller. The said Association objected on the ground, among others, that—

"The petitioner company has not disclosed everything connected with the patent fairly and fully. The petitioner company has not referred to all the patents, whether Indian or foreign, granted to the original inventor or the said Hilaturas Casablancas S. A., and the remuneration or profits which the original inventor and the said Hilaturas

[1] [1895] A. C. 675. [2] (1881) 6 App. Cas. 176.

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Casablancas S. A., may have derived through such foreign patents, as the questions of merit and insufficiency of remuneration are affected by the existence of such other patents. The extension should be refused on the ground of non-disclosure of material facts."

Instead of disposing of the petition, under the powers granted to them under section 15(3) of the said Act, the Governor-General in Council referred the petition to the High Court of Bombay for decision.

In the High Court, the petitioners, on being required to do so submitted a fresh petition. The objectors filed objections to the petition, and among those objections were some which they had not advanced before.

K. M. Munshi, with *Purshottam Tricumdas*, for the petitioners.

M. C. Setalvad, for objector No. 1.

N. H. Bhagvati, for objector No. 2.

KANIA J. In this matter the petitioners applied for an extension of Indian Patent No. 3294 by a petition dated January 10, 1934, and addressed to the Governor-General in Council. Under the rules framed by the Governor-General in Council, in pursuance of the powers given under section 77 of the Indian Patents and Designs Act (II of 1911), the petition was lodged with the Controller and was duly notified. The objectors now appearing filed their objections before the Controller as provided in rule 25. Thereafter the matter was forwarded to the Governor-General in Council for decision. Having regard to the inquiry involved in the matter, under the power given by section 15 of the Act, the Governor-General in Council has referred the matter to the High Court for decision.

It is alleged that the papers having reached the Prothonotary's office the Prothonotary sent for the petitioners' attorney and after a discussion advised him to file a petition in the form petitions are ordinarily filed in the High Court. Following that advice the petitioners filed

another petition addressed to the Hon'ble the Chief Justice and other Judges of the Court on February 14, 1934. That petition has been marked Mis. No. 12 of 1934. It was presented to the Judge in Chambers and the usual order for notices to be issued and fixing the hearing on March 5, 1934, was made. On the service of those notices the three objectors filed fresh affidavits in which, besides the grounds mentioned in their objections filed before the Controller, they have contended that the petition must fail *inter alia* because the petitioners had failed to make a full and free discovery of all material facts and also failed to show the profits made by the inventor not only by reason of the invention being registered in India but by reason of exploiting the invention in other parts of the world where it is admittedly registered.

It is pointed out by the learned counsel appearing on behalf of the petitioners that the procedure of filing a second petition is misconceived because under section 15 of the Act it is the petition originally submitted to the Governor-General in Council, and referred to the High Court for its decision, which the High Court should dispose of. In my opinion that submission is correct.

It is next urged on behalf of the petitioners that under the circumstances the objectors are not entitled to file any further grounds of objection and by reason of rule 25 (*10*) the grounds of objection filed before the Controller are exhaustive. It is urged that under rule 25 (*12*) the Controller alone had the power to give an extension of time or permit further objections to be filed. It is contended that once the proceedings are closed before the Controller and the papers forwarded to the Governor-General in Council, the objectors have no right to raise any fresh contentions. It is further argued that even when the petition is referred by the Governor-General in Council to the High Court, the powers of the High Court, under the circumstances, are necessarily limited and the objectors have no right to add to their original

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objections. For this contention reliance is placed on rule 25 (*10*) of the rules.

This is the first case which has been referred to this Court under the Act, and under the circumstances there is obviously no precedent on the point. The reason for referring the petition to the High Court appears to be that the matter involves taking of evidence and determination of questions of fact and which requires a judicial decision. Section 15 (*4*) of the Act provides that if the petition be referred to the High Court the patentee and the objectors shall be made parties to the proceeding and the Controller shall be entitled to appear and be heard. It, therefore, appears that on a reference to the High Court by the Governor-General in Council the matter ceases to be merely administrative and becomes a judicial proceeding; the parties to the proceeding being the patentee on the one hand and the objectors on the other and the Controller has also the right of audience. In the High Court Rules no procedure is separately prescribed for the hearing of such a petition, and, in the absence of such provision, I think, the ordinary rules of procedure followed by the High Court, devoid of its technicalities, should be adopted so far as the same are applicable to the particular case. In considering, therefore, whether the objectors should be allowed to bring in further grounds of objections it is necessary to inquire what materials the Court is entitled to consider for its decision. The decisions in *In re Bower-Barff Patent*[1] and *In re Adair's Patent*[2] suggest that when an extension of a patent is asked for, it would be legitimate for the Court to inquire what profits the inventor had made since its registration, and that inquiry may not be limited to what the inventor earned in his country but might include profits made by him in all countries where the invention was registered or exploited. It further appears that in such cases the Court insists on a full disclosure of the profits made by the inventor or his assignees, and when the Court

[1] [1895] A. C. 675. [2] (1881) 6 App. Cas. 176.

believes that there has not been a full or *bona fide* disclosure, the Court may summarily reject the application. From the rules of the Supreme Court in England it appears that petitions for extension are there heard by the Court and the procedure is the same as the procedure of the Court in its ordinary jurisdiction. Under the Indian law it appears that a part of the work in connection with the extension of patents is delegated to the Controller and the ultimate decision rests with the Governor-General in Council or, in the event of a reference to the High Court, with the High Court. Rule 25 framed under the Act makes the Controller the authority to receive the petitions, objections, replies to objections and to prepare the materials for forwarding the same to the Governor-General in Council in the first instance. Even when the decision is pending before the Governor-General in Council, I do not think if an objector, after knowing that the papers had been forwarded by the Controller to the Governor-General in Council, desired to add to the grounds of objection already raised, the same would be summarily rejected on the ground that the Governor-General in Council had no jurisdiction to receive any such further ground of objection without the same being forwarded through the Controller. Be that as it may, I think that once the petition is referred to the High Court under the Act and the petition becomes a judicial proceeding, it cannot be successfully contended that the High Court has no jurisdiction to allow any objector to add further grounds to his objection, which were not put before the Controller, even though according to what one might describe generally as justice, equity and good conscience the same should be properly considered. Under section 15 (*5*) it is the duty of the Court to inquire into the profits made by the patentee and into all the circumstances of the case. I think, apart from any specific objection raised by an objector, it will be open to an objector to point out to the Court that the petition did not disclose the materials which the

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applicant was bound to disclose. The objectors would thus be entitled to point that out to the Court in this proceeding without raising a specific objection. In my opinion, therefore, even if it was necessary to have an objection in writing from the objectors, the Court has jurisdiction to allow them to file such fresh objection provided this could be done according to the law relating to amendment of pleadings.

In the present case, I think the further objections contained in the affidavits filed on behalf of the objectors should be inquired into. The petitioners are not taken by surprise because those affidavits were filed so far back as March 17, 1934, i.e., soon after the notices were served on the objectors. Even if the second petition filed by the petitioners be considered as not filed and if the Court proceeded to hear the petition referred to it by the Governor-General in Council, I would give the objectors leave to amend their objections and add to the same the grounds contained in the affidavits filed by them in March, 1934. The objectors are given leave to utilise those affidavits in support of their further grounds of objection to oppose the petition which is referred to the High Court.

Order accordingly.

B. K. D.

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice.

1934
August 31

HARTENCIA DE SOUZA (PETITIONER) *v.* JOHN SEBASTIAN DE SOUZA (RESPONDENT).*

Indian Divorce Act (IV of 1869), sections 2, 3, 22 and 23—Petition for judicial separation—Court—Jurisdiction.

Under the Indian Divorce Act, sections 2 and 3, on a petition by the wife for a decree for judicial separation from her husband, the Bombay High Court has jurisdiction to grant the relief asked for, if the petitioner, when she last resided

* Matrimonial Suit No. 703 of 1934.