

CASE NO.:
Appeal (civil) 1759 of 2008

PETITIONER:
M/S. SHAND PIPE INDUSTRIES LTD

RESPONDENT:
M/S. HIND MOSAIC & CEMENT WORKS & ORS

DATE OF JUDGMENT: 03/03/2008

BENCH:
S.H. KAPADIA & B. SUDERSHAN REDDY

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO. 1759 OF 2008
(Arising out of SLP(C)No. 4685/2008)

Leave granted.

Heard learned counsel on both sides.

In this case, patent stood granted in favour of the respondents on 2.12.2006. Till then, appellant herein had not opposed the grant of patent. On 2.7.2007 suit was instituted in the District Court which stood transferred to the High Court when the appellant herein filed its counter claim on 18.7.2007.

When the matter came before the Single Judge it was held that the invention was not patentable. Aggrieved by the order of the Single Judge refusing interim relief the matter was carried in appeal before the Division Bench.

By the impugned order interim relief has been granted by the Division Bench. Hence this civil appeal at the behest of the defendant.

Having gone through the impugned order, we are of the view that the Division Bench has not analyzed the scheme of the Patents Act, particularly in the context of Sec.13 (4) read with Secs. 47 and 48 of that Act, particularly the effect of counter claim. This analysis was important as the Division Bench was required to consider the effect of the registration of the patent.

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In the circumstances we set aside the impugned order of the Division Bench restore O.J. Appeal No. 201 of 2007 and and remit the matter for fresh consideration in accordance with law. We keep contentions on both sides open. We express no opinion on the merits of the case. As the matter is of importance and urgency we direct the Division Bench to hear and decide the matter as expeditiously as possible and not later than four weeks from today.

The appeal is disposed of accordingly.