

Khawaja Tahir Jamal v AR Rehman Glass (2005 CLD 1768)

Khawaja Tahir Jamal v AR Rehman Glass In Khawaja Tahir Jamal v AR Rehman Glass (2005 CLD 1768) Khawaja Tahir Jamal claimed to be the patentee of a novel process for manufacturing sheet glass through float glass technology. Khawaja complained that AR Rehman Glass intended to infringe or had already infringed Khawaja's patent by establishing a float glass manufacturing unit, and sought an injunction to restrain Rehman from the infringing acts. Rehman contested the suit by alleging that Khawaja had obtained the patent through misrepresentation and fraud, as float glass technology was not new and Khawaja had not invented it. Rehman alleged that the Pakistani patent was an exact copy of a UK patent and therefore lacked novelty, and that Khawaja held no rights in the patent.

High Court Decision: Justice Hamid Ali Shah of the Lahore High Court held that Khawaja's patent was correctly granted and conferred on Khawaja the exclusive right to make, sell and use the invention throughout Pakistan; therefore, any violation of this right would give rise to an injunction. The judge also held that any infringement of the rights granted to Khawaja must be not only redressed but also suppressed, and that interim relief must be granted according to the relevant statute. He held that when a right or liability is created by a statute that also provides special enforcement remedies, those statutory remedies must be followed. After reviewing various cases and the principles of novelty, the judge held that, under the Patents and Designs Act 1911, the meaning of the words 'invention', 'publicly used' or 'publicly known' is restricted to Pakistan. He observed that Pakistan is not a signatory to any international patent convention and that the rights granted by a Pakistani patent are valid only in Pakistan. Similarly, patent rights granted in another jurisdiction do not automatically extend to Pakistan. The judge observed that Khawaja's patent was granted in 1993 and remained unchallenged until Rehman filed the counterclaim. In addition, the patent was granted only after Khawaja had complied with all the correct procedures and it had been published in the Official Gazette inviting public objections. No such objections had been filed. The judge also held that the damages claim filed by Khawaja did not constitute valid grounds to refuse the temporary injunction. He observed that Rehman had not disclosed its manufacturing process for float glass in its written statement and there was no evidence to show that, at the time of the grant of the patent, float glass technology was publicly known in Pakistan. The judge confirmed the earlier decision in *Telephonic Soap v Lever Brothers*, in which the court had held that the balance of convenience and irreparable loss in IP rights cases cannot be measured in monetary terms. The judge found that Rehman, instead of first seeking the revocation of the patent, took a risk and opted to establish its own project. He held that the law should

take its own course instead of coming to the rescue of such a party. Consequently, the judge granted an interim injunction and restrained Rehman from manufacturing, importing, launching or offering for sale its disputed sheet glass product.

Divisional Bench Decision Rehman filed an intra-court appeal before the Divisional Bench of the Lahore High Court. The Divisional Bench, comprising Justice Muhammad Akhtar Shabbir and Justice Shabbar Raza Rizvi, discussed the earlier judgment as well as the arguments of both parties, and endorsed all the points made by the single judge in favour of Khawaja. However, in light of Rehman's argument that it had spent a large sum of money establishing the sheet glass processing unit and that the furnace, once lit, must remain so, the Divisional Bench, while maintaining the earlier court order, modified that order to state that Rehman may continue to produce sheet glass but may not market it until the final decision in the case. Therefore, Rehman's appeal was dismissed with this amendment.