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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2024

CORAM:

THE HON'BLE MR. JUSTICE M. SUNDAR
AND
THE HON'BLE MR. JUSTICE R. SAKTHIVEL

C.M.A. No.2335 of 2024 & C.M.P. No.18553 of 2024

Tractors & Farm Equipment Limited
No.77, Nungambakkam High Road
Chennai 600 034
represented by its Authorised Signatory
C.P. Sounderarajan

Appellant

v

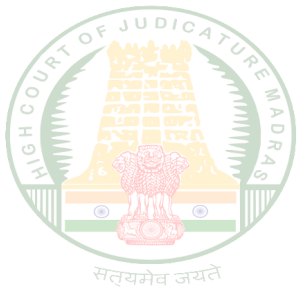
Massey Ferguson Corp.
4205 River Greenway Parkway
Duluth, 30096 United States of America
represented by its Authorised Signatory

Respondent

Civil Miscellaneous Appeal filed under Section 13 of the Commercial Courts Act, 2015 read with Order XLIII Rule 1(A) of the Code of Civil Procedure, 1908, challenging the order dated 16.08.2024 passed by the Principal Commercial Court, Egmore, Chennai in C.O.S.Sr.No.464 of 2024.

For appellant

Mr. Aryama Sundaram, Sr. Counsel
Mr. Krishna Srinivasan, Sr. Counsel
instructed by
Ms. Geethi Ara
Ms. Rohini Musa
Mr. Karthick Ram Mohan
Mr. Hemanth Ragu
Ms. Nithyashree
of M/s. Ramasubramaniam & Associates



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C.M.A. No.2335 of 2



and assisted by
Ms. Nirupam Lodha
Ms. Shivangi Narang

For respondent

Mr. R. Parthasarathy, Sr. Counsel
along with Mr. Suhrith Parthasarathy
instructed by Ms. Shreya Gupta
Mr. Abhijeeth Sadikala
Mr. Allwin Godwin
Ms. Akhila Jayaraj

JUDGMENT

(made by M. SUNDAR, J.)

Preface:

Captioned 'Civil Miscellaneous Appeal' (hereinafter 'CMA' for the sake of brevity, clarity and convenience) has been filed in this 'Commercial Appellate Division' (hereinafter 'CAD' for the sake of brevity, clarity and convenience) on 21.08.2024 assailing an order dated 16.08.2024 made in C.O.S. SR.No.464 of 2024 on the file of the Principal Commercial Court at Egmore, Chennai.

2. To be noted, above referred 'Principal Commercial Court at Egmore, Chennai,' shall hereinafter be referred to as 'said Commercial Court' and above referred 16.08.2024 order, wherein and whereby a plaint was returned, *inter alia* by taking recourse to Order VII Rule 10 of 'the Code of Civil Procedure, 1908' (hereinafter referred to as 'CPC' for the sake of



brevity, clarity and convenience) shall hereinafter be referred to as 'impugn order' for the sake of convenience and clarity.

Factual matrix in a nutshell:

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3. One 'Tractors and Farm Equipment Ltd.' (hereinafter 'TAFE' for the sake of brevity, clarity and convenience) presented a plaint dated 08.07.2024 *vide* C.O.S. SR. No.464 of 2024 on the file of said Commercial Court. In this plaint, TAFE is the sole plaintiff and the lone defendant is 'Massey Ferguson Corp., United States of America' (hereinafter 'MFC' for the sake of brevity, clarity and convenience).

4. In this suit, there are five limbs of prayers and they are set out in paragraph 94 of the plaint. Limbs 1 and 2 pertain to prayers for declaration in favour of TAFE (against MFC) that certain trademarks have been abandoned by MFC as regards its rights in India and certain trademarks are distinctive *qua* TAFE in India. As regards limbs 3 and 4, injunctive reliefs *qua* interfering with use of certain trademarks by TAFE in India and restraining MFC from claiming or holding out as regards some trademarks are sought. Limb 5 is the usual residuary limb which seeks any further or other order/s that are deemed fit and proper by said Commercial Court. Limbs 1 and 2 have been valued at Rs.25 lakhs each and limbs 3 and 4 have been valued at Rs.20 lakhs each, totalling Rs. 90 lakhs.



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5. There is no dispute or contestation that the plaint pertains to dispute arising out of Intellectual Property Rights relating to registered and unregistered trade marks. This means that it is a 'commercial dispute' within the meaning of Section 2(1)(c)(xvii) of 'Commercial Courts Act, 2015' (hereinafter referred to as 'CCA' for the sake of brevity, clarity and convenience). Likewise, the valuation paragraph is paragraph 90, the plaint is valued at Rs.90 lakhs in the manner set out in the earlier part of this narrative and therefore, value of subject matter of suit is of 'Specified Value' within the meaning of Section 2(1)(i) of CCA.

6. The plaint was presented in said Commercial Court by TAFE and MFC was on caveat. The said Commercial Court took recourse to Order VII Rule 10 of CPC owing to maintainability issue (to be noted, maintainability has to be decided only by the Court and the Registry does not have a say other than raising the maintainability issue), heard out learned counsel for TAFE as well as learned counsel for MFC which was on caveat and made the aforementioned impugned order returning the plaint for being presented in the Commercial Division of this Court. Aggrieved by this impugned order, TAFE, the sole plaintiff is on appeal as sole appellant before this Court.

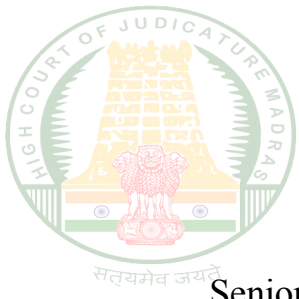


7. This CAD is of the view that it is not necessary to dilate on

on facts *qua* averments in the plaint, considering the limited legal perimeter within which legal drill at hand in captioned CAD appeal should perambulate. In other words or to put it differently, this CAD is now concerned with the question as to 'whether the impugned order made by said Commercial Court returning the plaint by taking recourse to Order VII Rule 10 of CPC is correct?' and the more pointed question as to 'whether the plaint ought to have been presented only in the Commercial Division and not in the Commercial Court, much less said Commercial Court?' is the short point that arises for consideration. Therefore, as observed *supra*, it is unnecessary to dilate on the plaint averments as regards facts any further.

Trajectory before this CAD:

8. The captioned matter was listed in the Admission Board, *i.e.*, Motion List. Mr. C. Aryama Sundaram, learned Senior Counsel and Mr. Krishna Srinivasan, learned Senior Counsel, instructed by Ms. Geethi Ara, Mr. Karthick Ram Mohan, Mr. Hemanth Ragu, Ms. Nithyashree of M/s. Ramasubramaniam & Associates and assisted by Ms. Rohini Musa, Ms. Nirupam Lodha and Ms. Shivangi Narang, were before this CAD on behalf of TAFE.



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9. MFC had lodged a caveat and Mr. R. Parthasarathy, learned Senior Counsel (along with Mr. Suhrith Parthasarathy) to be noted, Senior Counsel Mr. R. Parthasarathy is instructed by counsel on record Mr. Allwin Godwin and Ms. Akhila Jayaraj were before us for MFC. To be noted further, learned Senior Counsel and learned counsel Mr. Suhrith Parthasarathy were assisted by Mr. Rishal Gupta, Ms. Shreya Gupta and Mr. Abhijeet Sadikala.

10. Owing to the nature of the matter and the impact it is likely to have on other filings in the Commercial Courts in Chennai in particular and Commercial Division of this Court, this CAD wanted to know (even before the arguments commenced) from both sides as to whether they are ready to argue the main appeal if we are inclined to issue notice in the Admission Board. Learned counsel on both sides readily agreed. On that basis, we heard Mr. C. Aryama Sundaram, learned Senior Counsel for TAFE, issued notice, counsel on record for caveator (sole respondent) accepted notice for respondent and made submissions in the main appeal. Thereafter, Mr. Krishna Srinivasan, learned Senior Counsel for TAFE made reply submissions. As notice was issued and counsel on record for caveator (sole



respondent) accepted notice and it is notice regarding admission, records

said Commercial Court are really not necessary, it is more so given the nature of the matter where it is not a post trial verdict which is called in question and on the basis of this unanimity between both sides, the main appeal was heard out with the consent of both sides.

11. We find that an application for dispensing with Section 12A of CCA has been filed but as that would be outside the perimeter within which the legal drill at hand should perambulate, we leave that question open but we make it clear that we shall consider that question in another matter where it becomes imperative to return a verdict.

Points, discussion and dispositive reasoning:

12. Multiple points from different perspectives were argued by both sides. Therefore, we deem it appropriate to deal with each point one after the other and on setting out each point, we would be setting out/articulating our discussion and also giving our dispositive reasoning on each point. In other words, each of the sub paragraphs will have the point, discussion and dispositive reasoning rolled into one.



13. This CAD, having set out the manner in which this judgment will proceed, now, shall set out the aforementioned adumbration of each point, discussion on the same, dispositive reasoning rolled into one, set out the same as one bundle after the other and such adumbration is as follows:

13.1. It was argued by learned Senior Counsel for appellant that said Commercial Court ought not to have looked at CPC. This submission was made in the light of reference to Section 2(4) of CPC (definition of 'district' in the impugned order) by said Commercial court in the impugned order. To be noted, there is also a reference to 'District Court' within parenthesis in the definition of 'district' *vide* Section 2(4) of CPC. In this regard, to buttress this submission, it was submitted that CCA is (i) a special Act, (ii) a self-contained Code and (iii) it excludes all other statutes and Codes which run into it (Section 21 which deals with overriding effect of CCA). Interestingly, it was also submitted that CCA is partly substantive and partly procedural. We leave open the question as to whether CCA is partly substantive/partly procedural law or wholly procedural law as that is really not imperative to be part of dispositive reasoning for returning a verdict in the legal

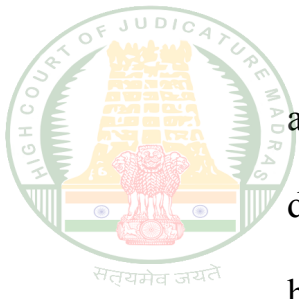


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drill at hand.

In this regard, learned Senior Counsel for MFC drew our attention to sub section (2) of Section 2 of CCA. A careful perusal of the scheme of the statute, *i.e.*, scheme of CCA, definition clause, sub section (2) of Section 2, makes it clear in categorical terms that the words and expressions used but not defined in CCA shall have the same meaning as assigned to them in CPC if the same are defined in CPC. We also looked at sub section (3) of Section 16. We make it clear that Section 16 read with Schedule is the soul of CCA and a careful perusal of CCA which talks about amendments to CPC in its applicability to commercial disputes makes it clear that when any rule of the jurisdictional High Court or any amendment to CPC by the State Government is in conflict with the provisions of CPC as amended by CCA, the provisions of CPC, as amended by CCA, will prevail. The scheme of the statute makes it clear that when it comes to commercial disputes and a trial in a Commercial Court, CPC, as amended by CCA will apply as regards those provisions of CPC which are amended by CCA. It is axiomatic and the inevitable corollary is, those of the provisions of CPC which have not been amended by CCA will

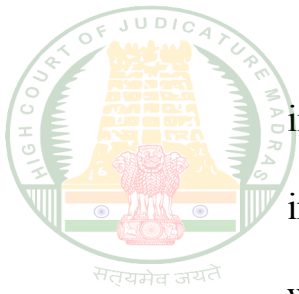


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apply in full force to Commercial Courts and trial of commercial disputes in a Commercial Court / Commercial Division and hearings in CAD are no exception.

In this regard, we deem it appropriate to elaborate a little. CPC consists of 158 Sections, LI Orders *vide* Schedule I to CPC (in terms of 1 to 158 and Order I to Order LI but the actual number of Sections may be more/less, taking into account the alpha series in certain Sections besides insertions and deletions) and 8 Appendices to Schedule I, *viz.*, A to H. The CCA, *vide* Section 16 and Schedule thereto, which we have described as the soul of CCA, amends three of the 158 Sections, 10 of the LI Orders and adds one Appendix, *viz.*, Appendix I to the existing 8 Appendices, *viz.*, Appendices A to H. This means that those of the Sections, Orders and Appendices which remain unamended by CCA will apply in full force to a Commercial Court trying a commercial dispute. In very simple terms, any other interpretation would render a trial in a Commercial Court a non-starter and it would only derail any trial. In other words, no trial in a Commercial Court would be possible if CPC is not to be looked into. In this regard, we deem it appropriate to write that the plaint



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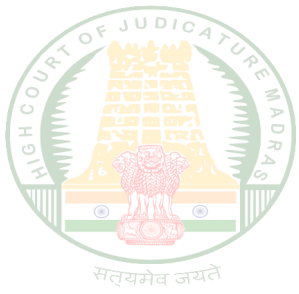
in C.O.S.SR. No.464 of 2024 which has now been returned *vide* impugned order itself invokes Order VII Rules 1 and 2 of CPC which have not been amended by CCA. In this regard, we also deem it appropriate to add that learned Senior Counsel for TAFE drew our attention to the caption of the plaint and pointed out that the caption talks about Section 2(1)(c)(xvii) of CCA. Be that as it may, we find that the caption does not talk about Section 2(1)(i) (Specified Value) and we will be adverting to the same in the latter part of this order elsewhere *infra*.

It was argued that CCA itself defines the term 'District Judge' *vide* Section 2(1)(e) and this is another reason as to why recourse to Section 2(4) of CPC should not have been taken by said Commercial Court.

We carefully perused the definition of the expression 'District Judge' *vide* Section 2(1)(e) of CCA. We find that the definition of Section 2(1)(e) runs as follows:

'2 Definitions: (1) In this Act, unless the context otherwise requires, --

- (a)
- (b)
- (c)
- (d)



(e) “District Judge” shall have the same meaning as assigned to it in clause (a) of Article 236 of the Constitution of *India*;

Article 236(a) is neatly slotted in Chapter VI of Part VI of

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the Constitution. Part VI is captioned 'the States' and Chapter VI thereat is captioned 'Subordinate Courts'. Article 236(a) refers to District Judge in that chapter, *i.e.*, Chapter VI of Part VI but it is really not necessary to dilate further on this Constitutional law aspect as our dispositive reasoning *supra qua* point 1 clinches the matter. This means that the argument that the term 'District Judge' being defined *vide* Section 2(1)(e) of CCA precludes the said Commercial Court from looking at Section 2(4) definition *vide* CPC is a non starter. In any event, as regards Section 21 of CCA, overriding effect would come into play only when there is a conflict. In the case on hand, we find that no conflict is there nor has it been projected before us. The sum sequitur is, there is no error in said Commercial Court adverting to Section 2(4) of CPC.

13.2 The other limb or in other words, the extension of the argument set out *supra* is the second point and that is, the Commercial Court and the Commercial Division exercise



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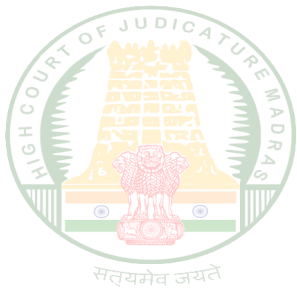


jurisdiction *qua* commercial disputes *vide* Section 2(1)(c)(xvii) of CCA but are segregated by pecuniary jurisdiction. In other words or to put it in simple terms, the argument is, those of IPR suits *vide* Section 2(1)(c)(xvii) of CCA where a plaint is valued Rs.1 crore or less would go to the Commercial Court and those valued at Rs.1 crore or more would only come to the Commercial Division {to be noted, the pecuniary jurisdiction of Original Side of Madras High Court is above Rs.1 Crore}.

As regards this segregation, we deem it appropriate to deal with the same while setting out our discussion (elsewhere *infra*) and giving our dispositive reasoning as regards argument/point predicated on the first proviso to Section 7 of CCA.

13.3 This takes us to another facet of the appellant's campaign against the impugned order, *i.e.*, third point. This facet turns on the first proviso to Section 7 of CCA. Before proceeding further, we deem it appropriate to extract and reproduce Section 7 of CCA along with two provisos thereat and the same reads as follows:

'7. Jurisdiction of Commercial Divisions of High Courts.-- All suits and applications relating to commercial disputes of



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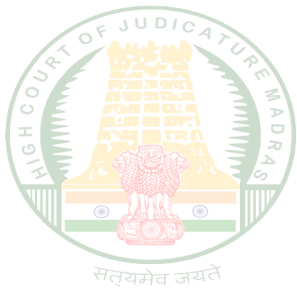
a Specific Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court:

Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a Court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court.

Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of Section 22 of the Designs Act, 2000 (16 of 2000) or Section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction.'

(emphasis supplied)

Adverting to the aforementioned first proviso, it was argued on the appellant's side that the expression '*filed or pending*' (occurring in first proviso) necessarily refers to matters which had been filed prior to the kicking in of CCA or the establishment of Commercial Division and those which are pending and axiomatically, it was argued that the aforesaid first proviso does not apply to future matters or matters to be filed and that the said plaint would fall in the latter category. In support of this submission, reliance was placed on the language / expression used by the statute in sub section (3) of Section 10 of CCA. Section 10 deals with jurisdiction in respect of arbitration matters and sub section (3) thereat reads as follows:



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'10 Jurisdiction in respect of arbitration matters.-- Where the subject matter of an arbitration is a commercial dispute of a specified value and --

(1)

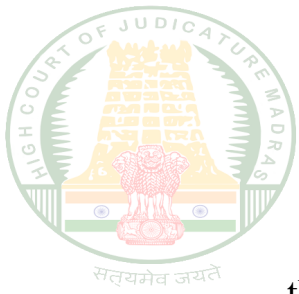
(2)

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any Principal Civil Court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.'

(emphasis supplied)

Adverting to the expression '*shall be filed*', it was argued by learned Senior Counsel for TAFE that CCA and the lawmakers are conscious of the expression '*shall be filed*' for anything that is futuristic but have not chosen to use the same in first proviso to section 7 of CCA.

In response to this argument, learned Senior Counsel for MFC drew our attention to sub sections (1) and (2) of Section 10 and submitted that the expression used there is '*have been filed*' but in the first proviso to Section 7, neither of the expressions has been used. In other words, according to learned Senior Counsel, neither the expression '*have been filed*' nor the expression '*shall be filed*' has been used in the first proviso to Section 7.

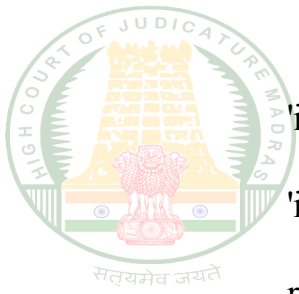


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We carefully perused the rival submissions. We find that in the first proviso to Section 7, the term 'Specified Value' is conspicuously absent. The first proviso to Section 7 talks only about 'a commercial dispute'. This means that as regards a commercial dispute under Section 2(1)(c), irrespective of the Specified Value, the same can be entertained by the Commercial Division if it falls under first proviso to section 7.

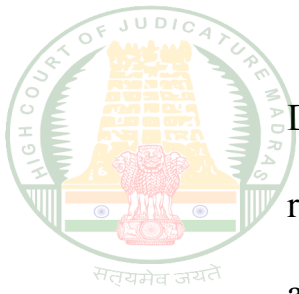
In this regard, we put it to the learned Senior Counsel on both sides as to whether this first proviso to Section 7 is relatable to any other category in the 20 + 1 (21) categories adumbrated under Section 2(1)(c) of CCA. In other words, other than Section 2(1)(c)(xvii), is there any other category of commercial disputes which is relatable to the first proviso to Section 7, is the neat and precise question that we posed to the learned Senior Counsel on both sides. Adverting to the other 20 categories [to be noted, no notification has been made by the Central Government *vide* clause (xxi) of Section 2(1)(c) of CCA], both learned Senior Counsel made a faint submission that clause (xx) which talks about



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'insurance and reinsurance' and Section 2(1)(c)(iii) which says 'issues relating to admiralty and maritime law' may have some relation to first proviso to Section 7 but that pales into insignificance and drowns in the sea of statutory scheme as admiralty jurisdiction is vested only with the High Court (the District Courts do not have admiralty jurisdiction) and there is no provision in Insurance Laws which says that suit should not lie in a Court inferior to District Court. This means that this takes this discussion to an arena where we notice that there is no similar proviso to Section 6 of CCA. There are no provisos at all to Section 6. The sequitur is, as regards Section 6 captioned 'Jurisdiction of Commercial Court', only those matters which satisfy the twin conditions of being a 'commercial dispute' under Section 2(1)(c), *i.e.*, one of the 21 categories and of 'Specified Value' *vide* Section 2(1)(i) read with Section 12 of CCA, will qualify to be heard by Commercial Court, whereas, in the light of language in which the first proviso to Section 7 is couched, even those of the matters which are commercial disputes but not of Specified Value will qualify, provided a statute stipulates or makes it clear that the suit will lie in a Court which is not inferior to a



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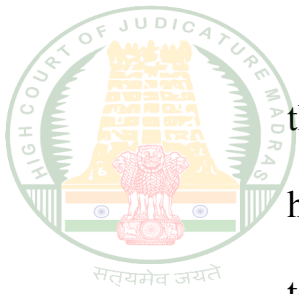


District Court. This means that the first proviso to Section 7 is
relatable to only one of the 21 categories under Section 2(1)(c)
and that is clause (xvii) which reads as follows:

'2. Definitions.-- (1) In this Act, unless the context otherwise
requires--

- (a) ...
- (b) ...
- (c) "Commercial dispute" means a dispute arising out of--
 - (i) ...
 - (ii) ...
 - (iii) ...
 - (iv) ...
 - (v) ...
 - (vi) ...
 - (vii) ...
 - (viii) ...
 - (ix) ...
 - (x) ...
 - (xi) ...
 - (xii) ...
 - (xiii) ...
 - (xiv) ...
 - (xv) ...
 - (xvi) ...
 - (xvii) intellectual property rights relating to registered and
unregistered trademarks, copyright, patent, design, domain names,
geographical indications and semiconductor integrated circuits;'

To be noted, we are concerned with clause (xvii) as alluded
to *supra*. In this regard, we make it clear that all the legislations
or Acts which fall under the basket of Intellectual Property Rights,
viz., the Trademarks Act, 1999, the Copyright Act, 1957, the
Designs Act, 2000, the Patents Act, 1970, the Geographical
Indications of Goods (Registration and Protection) Act, 1999 and



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the Protection of Plant Variety and Farmers' Rights Act, 2001, have a provision which says that suit will not lie to a Court inferior to that of a District Court. For the sake of ease of reference, the provisions in these six enactments as per which a suit will not lie to a Court inferior to that of a District Court, are set out in the following tabular column:

S.No	Name of Act	Relevant Provision
1	The Trademarks Act, 1999	Ss. 134 and 142
2	The Patents Act, 1970	S.104
3	The Copyright Act, 1957	S. 62
4	The Designs Act, 2000	S. 22
5	The Geographical Indications of Goods (Registration and Protection of Plant Variety and Farmers' Rights Act, 2001	Ss. 66 and 73
6	The Protection of Plant Variety and Farmers' Rights Act, 2001	S. 65

Therefore, the first proviso to Section 7, in our considered view, is designed to carve out an exception from and out of 21 categories under Section 2(1)(c), *i.e.*, clause (xvii) and move that to the Commercial Division (alone) wherever there is one. In this regard, we deem it appropriate to write that out of 25 High Courts in the country, Commercial Division is there in as many as five High Courts, *viz.*, Bombay, Calcutta and Madras (Chartered High

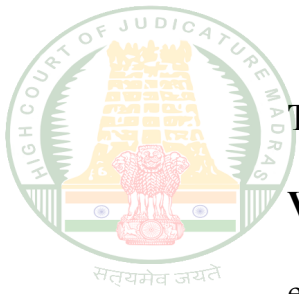


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Courts), besides Delhi and Himachal Pradesh (where Original Side has been put in place by way of statute). In all other 20 High Courts, it is Commercial Appellate Division and there is no Commercial Division. Therefore, with regard to these five High Courts, an exception has been carved out with regard to IPR suits so that the same are heard by Commercial Division only (irrespective of specified value).

We deem it appropriate to write that we are acutely conscious that an Hon'ble Single Judge of the Delhi High Court, in **Vishal Pipes Ltd. vs. Bhavya Pipe Industry [2022 SCC Online Delhi 1730 : (2022) 91 PTC 474]** telescoped the first proviso to Section 7 into Section 6 but in **Pankaj Ravjibhai Patel Trading as Rakesh Pharmaceuticals**, a Division Bench of the Delhi High Court, in order dated 02.11.2023, *vide* paragraphs 31 and 32, held that it is unable to subscribe to **Vishal Pipes**. To be noted, **Pankaj Ravjibhai Patel Trading**, is not an appeal arising out of **Vishal Pipes** but is an intra Court appeal arising out of another matter, as **Vishal Pipes** was brought to the notice of Hon'ble Division Bench of Delhi High Court in **Pankaj Ravjibhai Patel**



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Trading, Hon'ble Division Bench wrote that it cannot subscribe to **Vishal Pipes**. However, we make it clear that we are not referring either to **Vishal Pipes** or to **Pankaj Ravjibhai Patel Trading** as they are not judgments rendered by Coordinate Benches and reference to the same is not imperative for the dispositive reasoning which we are writing. Nonetheless, we have chosen to mention about **Vishal Pipes** and **Pankaj Ravjibhai Patel Trading**, as we deemed it appropriate to make it clear that this position subsists in another High Court, to make this discussion as comprehensive as possible, CCA being a pan India legislation. In any event, even if **Vishal Pipes** and **Pankaj Ravjibhai Patel Trading** are taken into account, *i.e.*, on a demurrer, it will not impact the dispositive reasoning as we are only saying that the first proviso to Section 7 is unique and going by **Pankaj Ravjibhai Patel Trading**, as it says that it does not subscribe to **Vishal Pipes**, it would only buttress the line of dispositive reasoning which we are adopting. To put it with specificity, we write that the first proviso to Section 7 is unique to Section 7, *i.e.*, Commercial Division, it is absent in Section 6 and first proviso is relatable only to IPR suits, *i.e.*, Section 2(1)(c)(xvii) of CCA.

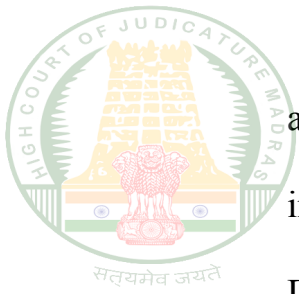


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With regard to the second point argued on the appellant's side that the Commercial Courts and the Commercial Division are segregated only by pecuniary value, we are of the view that dispositive reasoning *qua* the first proviso to Section 7 makes the position clear that one out of 21 categories adumbrated under Section 2(1)(c) of CCA, only one clause [clause (xvii)] has been carved out for being heard exclusively by Commercial Division {irrespective of specified value} (in five High Courts) and therefore, the argument that the jurisdictions of Commercial Courts and Commercial Division are segregated by pecuniary jurisdiction does not hold water when it comes to Section 2(1)(c)(xvii) of CCA, *i.e.*, IPR suits.

As regards the segregation of the two jurisdictions by pecuniary value, a judgment rendered by a Single Judge of the Delhi High Court in **Super Cassettes Industries Pvt. Ltd. v. Goldy Dish Antenna [2016 SCC OnLine Del 4622]** was pressed into service by the appellant and our attention was drawn to paragraphs 14 to 17 and 21 to 27 thereof. We find that on facts, **Super Cassettes** is one where multiple copyright suits were filed



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and the suits were valued at Rs.200/- for the relief of permanent injunction and the question that arose is whether the Commercial Division or the Commercial Appellate Division would hear this matter. In this regard, we find that **Super Cassettes** is clearly distinguishable on facts and we remind ourselves of the declaration of law made in **Padma Sundara Rao (dead) and others vs. State of Tamil Nadu and others [(2002) 3 SCC 533]** in which the factual matrix was the question as to whether on a Section 4 notice under the Land Acquisition Act being quashed, the State gets a fresh period of time to make the Section 6 declaration. Hon'ble Supreme Court wrote that every precedent / case law has to be relied based on the facts obtaining therein. Relevant paragraph in **Padma Sundara Rao** is paragraph 9 which reads as follows:

'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

(emphasis supplied)

We refer to **Padma Sundara Rao**, as declaration of law as it was

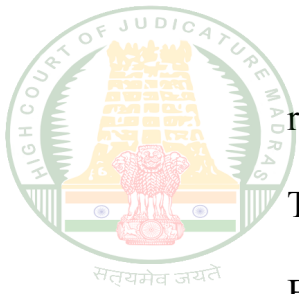


rendered by Hon'ble Constitution Bench and therefore, the ratio gets elevated to that of declaration of law.

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Be that as it may, with greatest of respect, we also find that in **Super Cassettes**, 'pecuniary value' and 'Specified Value' have been referred to in more or less analogous perspectives but we are of the view that the same are different and distinct. Pecuniary value is as provided *vide* the second proviso to Section 3(1), wherein, the State Government, in consultation with the High Court, notifies or constitutes a Commercial Court at district level and 'Specified Value' is a term of art, *i.e.*, a term defined *vide* Section 2(1)(i) of CCA, wherein, it was originally Rs.1 crore when the CCA kicked in and it was brought down to Rs.3 lakhs in and by a 2018 amendment, *i.e.*, Act 28 of 2018 which kicked in on 03.05.2018.

Be that as it may, in the legal drill on hand, as regards bone of contention *i.e.*, comparing Delhi High Court and Madras High Court would tantamount to comparing apples and oranges as the Original Side of Delhi High Court exercises jurisdiction over entire State of Delhi whereas Original Side of Madras High Court exercises jurisdiction over Madras district alone and as regards



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rest of Tamil Nadu, respective district courts exercise jurisdiction.

To be noted, Delhi is a city State unlike Tamil Nadu and Madurai Bench of Madras High Court which has under its wings 13 out of 40 districts does not have Original Side. It is for this reason we have described that comparing Original Sides of Delhi High Court and Madras High Court would tantamount to comparing apples and oranges. As Original Side of Delhi High Court exercises jurisdiction over all districts in Delhi including New Delhi i.e., Tis Hazari Court {Central & West Delhi}, Patiala House Court {New Delhi}, Karkardooma Court {East, North-East & Shahdara}, Rohini Court {North-West & North Delhi}, Dwaraka Court {South-West Delhi}, Saket Court {South & South-East Delhi}, Rouse Avenue Court {Central & West Delhi}.

In this view of the matter, Original Side of Delhi High Court and the 7 District Courts being segregated by pecuniary jurisdiction [Rs.2 Crores is pecuniary jurisdiction of Original Side of Delhi High Court] is completely on a different footing. Therefore, it may be totally incorrect to rely on Super Cassettes Judgment or to ever rely on Super Cassettes Judgment.

13.4. One other point (fourth point) that was urged is that

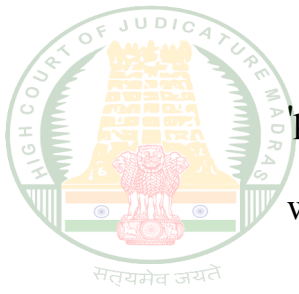


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the High Court (Original Side) is not a District Court. A straightforward answer to this lies in the language in which Section 134(1) of 'the Trade Marks Act, 1999' ['TM Act 1999' for the sake of convenience] is couched. Section 134(1) of TM Act 1999 makes it clear that a suit shall not be instituted in any Court inferior to a District Court having jurisdiction, meaning, as long as there is territorial jurisdiction, a Court which is not inferior *i.e.*, below the District Court in the 'hierarchy of Courts' (cannotation) as we understand the expression 'inferior' cannot be approached. High Court (Original Side) is obviously above the District Court in the hierarchy of Courts and therefore, this does not present a problem.

We also find that in first proviso to Section 7 of CCA, the words used are 'file' and 'lie'. We carefully perused P. Ramanatha Aiyar's Law Lexicon on the said two words. The word 'file' means *'to deposit with the proper custodian for keeping; to place in the official custody of the clerk; to put upon the files or among the records of a Court.'* The word 'lie' means *'to subsist; to exist;'* To be noted, these two meanings are the most relevant. Therefore, the expressions 'file' and 'lie' *qua* a suit necessarily pertain to



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'presentation of a plaint' *vide* Rule 21 of Civil Rules of Practice which is prior to institution of suits.

The Commercial Courts Act, 2015 kicked in on 23.10.2015, the first sitting of the Commercial Division of this Court [Madras High Court], was on 04.12.2017. Prior to 23.10.2015, all IPR suits i.e., suits arising out of Trade Mark, Copyright, Designs, Patent, Geographical Indications are being filed only in the Original Side of this Court for several years and not in the City Civil Court. This position was not disputed but it is being set out only as a matter of custom of this Court. However, the position prior to 23.10.2015 and that after 23.10.2015 and more particularly on and from 04.12.2017 are two different regimes and therefore, we have dealt with the case on hand independent of this custom and as a practice of this Court. However, after independently deducing our conclusions, in the light of conclusions we lean towards adhering to the custom rather than making a departure which is not really warranted by the statute.

Impugned Order :

14. Inter-alia in the light of the discussion and dispositive reasoning



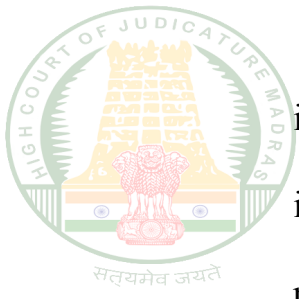
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set out supra, we find no ground to interfere with the order of said Commercial Court. Main reasons are as follows:

(a) This CAD, as would be evident from the discussion, dispositive reasoning supra, has come to the conclusion that all provisions of CPC which are not amended by CCA will apply in full force to a Commercial Court. We buttress this reasoning by pointing out that three [Order XIII Rule 1, Order VII Rule 14 and Order VIII Rule 1-A] provisions of CPC have been made inapplicable to Commercial Courts vide Schedule to CCA which has to be read with Section 16 of CCA. A careful perusal of these provisions which have been made inapplicable will make it clear that these provisions are such that they are either in a overlap / conflict with unamended provisions of CPC or do not fit into the CCA timelines. This CAD having been buttressed this dispositive reasoning, has no hesitation in writing that said Commercial Court cannot be found fault with for having relied on Section 2(4) of CPC or for that matter other provisions of unamended CPC, i.e., provisions of CPC which have not been amended by CCA;

The sequitur is we find absolutely no infirmity in the



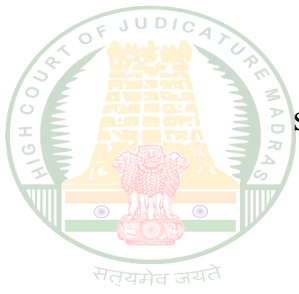
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impugned order of the said Commercial Court much less any illegality warranting interference in terms of relying on CPC provisions.

(b)As alluded to in the dispositive reasoning supra, it is by usage nay convention of the Madras High Court that all IPR suits are filed on the Original Side of the Madras High Court (irrespective of pecuniary value of the suit) even prior to 04.12.2017 when the Commercial Division first sat in Madras High Court and for that matter as well as in the period prior to 23.10.2015 when the CCA kicked in. This CAD deems it appropriate to buttress this by referring to a case law, namely, ***P.M.Swamy Vs. K.Sultan Mohideen*** reported in ***1958 SCC OnLine Mad 22***.

P.M.Swamy case (snuff) arose under the Trade Marks Act, 1940 ['TM Act 1940' for the sake of convenience]. In this Act which is a predecessor Act [predecessor qua the Trade and Merchandise Marks Act, 1958], Section 73 of TM Act 1940 is akin to section 134(1) of TM Act 1999 that is now in vogue. Relevant portion of Section 73 of TM Act 1940 of the erstwhile



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statute reads as follows:

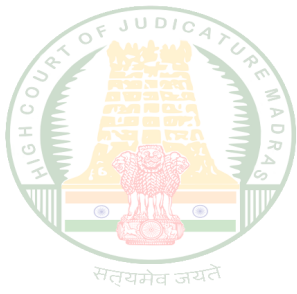
'73.No suit for the infringement of a trade mark or otherwise relating to any right in a trade mark shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit.'

In P.M.Swamy case, when a decree in trade mark suit was passed by a City Civil Court (not the High Court) was assailed to be nullity in execution proceedings, this Court by tersely eloquent judgment sustained the nullity plea and reasoning is predicated on Section 73 of TM Act 1940. In other words, this court in P.M.Swamy case made it clear that as regards IPR regime, the jurisdiction for trying the suit was held to be with the Original Side of the Madras High Court and not the City Civil Court. The Chennai City Civil Court Act, 1892 [hereinafter 'CCC Act' for the sake of convenience] is of relevance, Section 16 of CCC Act clearly says the power of High Court and the same reads as follows:

'16.Saving of original civil jurisdiction of High Court.--

Nothing in this Act contained shall affect the original civil jurisdiction of the High Court:

Provided that --



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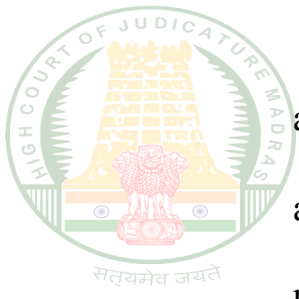
(1)if any suit or other proceedings is instituted in the High Court which, in the opinion of the Judge who tries the same (whose opinion shall be final), ought to have been instituted in the City Court, no costs shall be allowed to a successful plaintiff and a successful defendant shall be allowed the costs [at the maximum admissible under the Madras High Court Fees Rules for suits set down for final disposal];

(2)in any suit or other proceedings pending at any time in the High Court and Judge of such Court may at any stage thereof make an order transferring the same to the City Court if in his opinion such suit or proceedings is within the jurisdiction of that Court and should be tried therein;

(3)in any suit or other proceedings so transferred, the Court-fees Act, 1870 (Central Act VII of 1870) shall apply, credit being given for any fees levied in the High Court.'

In this view of the matter, the said Commercial Court having predicated its reasons in the manner in which it has done cannot be said to have fallen in error.

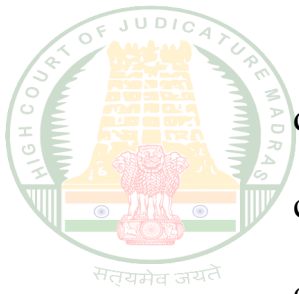
(c)We have set out in detail the scope of the first proviso to Section 7 of CCA. The said Commercial Court has also hinged the impugned judgment strongly (not solely) on this first proviso to section 7 of CCA. In addition to our dispositive reasoning supra that this first proviso to section 7 of CCA would



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apply to fresh cases to be filed and not to the pending cases, we add that the expression '*filed or pending*' occurring in this first proviso is read in a manner in which the appellant wants us to read would tantamount to render a part of the expression otiose. Law is well settled that there is no reason for the Court to read a part of the provision in a manner that it renders a part of it otious when it can be read harmoniously with the objective of the statute and other provisions in such a manner that no part is held otiose or superfluous. We add that this first proviso to section 7 of CCA is relatable to only one of $20 + 1 = 21$ categories of commercial disputes adumbrated in Section 2(1)(c) and that one is Clause (xvii), which deals with IPR suits. As would be evident from our dispositive reasoning, a faint reference was made to clause (iii) [admiralty] and clause (xx) [insurance and re-insurance] but there are no provisions qua admiralty or insurance statutes akin to section 134 of TM Act 1999 which says suit cannot be instituted in a Court inferior to that of a District Court. In this view of the matter, we have no hesitation whatsoever in writing that the first proviso to section 7 of CCA is relatable to only one of $20 + 1 = 21$ categories of commercial

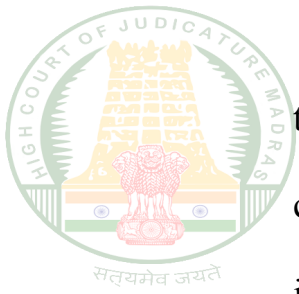


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disputes adumbrated in section 2(1)(c) of CCA and that one category is clause (xvii). Therefore, the objective of CCA is very clear as day light and the objective is to take out clause (xvii) {in asfar as the High Courts which have ordinary Original Civil jurisdiction} from Commercial Courts and vest in the Commercial Divisions. Therefore, we are unable to persuade ourselves to believe that said Commercial Court has fallen in error in interpreting the first proviso to section 7 of CCA and arriving at a sequittur that the suit it was grappling with will lie only in the Commercial Division of this court and not before it.

(d) Said Commercial Court in the impuned order has relied heavily on notifications / rules made by this Court for I.P. Division, besides the practice note and notifications qua Commercial Division and Commercial Courts. These are either instructions for administrative side or rules made by this Court in exercise of its rule making power to regulate the proceedings before it. Said Commercial Court as it stands in the hierarchy of Courts cannot be faulted for having relied on such practice note and instructions and rules made by this Court as constitutionally speaking it is a subordinate Court qua Chapter VI of Part VI of



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the Constitution, i.e., subordinate Court qua High Court. This court has always leaned towards the expression 'district judiciary' or 'trial court' in preference to subordinate court but in deference to the Constitutional language and as the context demands, we have referred to the caption (Chapter VI) as occurring in the Constitution.

In this regard, adding to the dispositive reasoning supra, the Madras High Court has a IP Division which deals with IPR matters and more particularly those of the matters which would have otherwise gone before the erstwhile IPAB which, now, does not exist owing to the Tribunals Reforms Act, 2021, which kicked in on 04.04.2021. 'The Madras High Court Intellectual Property Rights Division Rules, 2022' ['IPD Rules' for the sake of convenience] have been made to regulate proceedings of IP Division and this set of Rules is operating. This is another buttressing reason (on a demurrer) to say that all IPR matters should go before the Commercial Division of the High Court rather than the said Commercial Court. On a larger perspective, i.e., on larger canvass, as regards other districts in State of Tamil Nadu (other than Chennai/Madras), if a litigant seeks

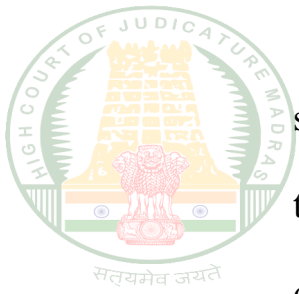


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rectification of a trade mark, unlike the IPAB regime, i.e., the regime which existed prior to 04.04.2021, the litigant would now have filed it in the IP Division of Madras High Court. If there is a infringement suit in the same case (at least in Madras), the rectification application has to be tagged with the infringement suit and tried as cross suit as per IPD Rules of this Court. This provision has been made to eliminate anomalies and possible conflict of decisions besides eliminating protraction of litigation. Therefore, the impugned order is correct in referring to IPD Rules. The said Commercial Court has rightly referred to IPD Rules and has come to the conclusion that IPD Rules also buttress the view that has been taken by said Commercial Court in the impugned order.

A careful perusal of the scheme of the statute, i.e., CCA makes it clear that when Section 6 deals with the jurisdiction of the Commercial Court, Section 7 deals with the jurisdiction of Commercial Divisions. When we first talk about Commercial Divisions, we talk about 5 out of 25 High Courts in the Country, i.e., Madras, Bombay, Calcutta [Chartered High Courts], Delhi and Himachal Pradesh which have Original Side traceable to a

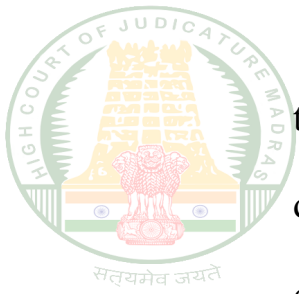


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statute. Therefore, law makers were clear that Section 7 pertains to only 5 High Courts. In this view of the matter also, the deference to statute as well as hierarchy of Courts shown by the said Commercial Court is in order and there is no ground calling for interference.

As a corollary to the previous point, we find that there are no provision in Section 6 as regards to second proviso to section 7. It is more than obvious that it has no place in Section 6 as section 6 deals with jurisdiction of Commercial Courts and not Commercial Divisions (first proviso to section 7 of CCA which we are concerned with). It could have well been possible to put in similar proviso in section 6 also. That there is no similar proviso in Section 6 means that IPR suit which is valued less than Rs.3 lakhs (which is not uncommon at all), as there is provision for notional valuation for injunctive reliefs which is recognised by section 12 read with section 2(1)(i) of CCA. Those of the suits which are valued less than Rs.3 Lakhs will have to be heard by the regular court and not Commercial Court. This means that in such a suit which constitutes a sizeable chunk of Section 2(1)(c)(xvii), litigation will not be governed by



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the timeline under CCA. As an illustration in such a IPR suit, defendant can file written statement well after 30 days + 90 days, i.e., 120 days, give a goby to *SCG Contracts* principle reported in (2019) 12 SCC 210 and seek condonation of delay and this will apply to all other timelines under CCA. If IPR litigations are to be delayed endlessly by resorting to this, it would run counter productive to the very objective of CCA. Whether there should be a proviso to section 6 akin to the first proviso to section 7 is a larger question which in our considered opinion may be outside our remit, i.e., outside the legal perimeter within which the legal drill on hand should perambulate. Therefore, we are not treading into that arena and we are leaving that question open. Suffice to say that as regards the case on hand and the Madras High Court (rest of Tamil Nadu), as there is no proviso to section 6 which is akin to the first proviso to section 7 would lead to a situation where a sizeable chunk of IPR litigations go before the regular court and not the Commercial Court. This will be an anathema to the sublime philosophy underlining CCA and salutary principle guiding CCA. Therefore, we have no hesitation whatsoever in



saying that said Commercial Court was correct in its approach in returning the plaint (by referring to Order VII Rule 10 of CPC for being presented in the Commercial Division of this Court).

(e) The said Commercial Court, in the impugned order, has referred to possible forum shopping and we find this to be a very tenable point. The reason is, as already alluded to supra, as regards injunctive reliefs, notional valuation is possible and similar / same kind of suits can be presented either in the Commercial Court or in the Commercial Division by a plaintiff by reducing or increasing the valuation which is neither *ad valorem* nor fixed as regards injunctive reliefs are concerned. This again is not a desirable situation and therefore, we find the impugned order to be correct and appropriate in addressing this issue.

(f) Lastly, we find that no prejudice has been caused to the appellant by the impugned order as the appellant can proceed with the same suit in the Commercial Division (subject of course Section 12-A point which may come up for consideration, which in any event would fall for consideration in



Commercial Court also).

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15. To be noted, the dispositive reasoning which has been amplified by us in dealing with the impugned order of said Commercial Court shall also be read as integral part and parcel of the dispositive reasoning *supra*.

Conclusion:

16. Before we conclude, we make it clear that notwithstanding myriad grounds raised in the memorandum of grounds of appeal, the arguments *i.e.*, campaign against the impugned order, were predicated on the points that have been dealt with *supra* and both sides agreed that all the points that were urged have been dealt with. This submission is recorded.

Apropos, the captioned appeal fails to pass muster and the impugned order of said Commercial Court is sustained.

Decision:

17. *Ergo*, the sequitur is captioned CMA fails and the same is dismissed. Consequently, captioned CMP also perishes with captioned

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CMA. In other words, captioned CMP is disposed of as closed. There shall be no order as to costs.

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(M.S., J.) (R.S.V., J.)
27.08.2024

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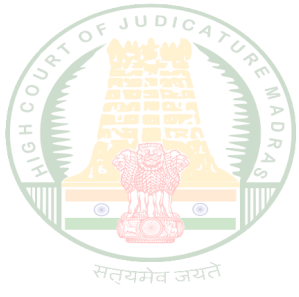
Neutral citation : Yes

Speaking order : Yes

To

The Principal Commercial Judge
Egmore
Chennai

M. SUNDAR, J.
and
R. SAKTHIVEL, J.



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27.08.2024