

IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

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CIVIL REVISION PETITION No.2297 OF 2024

Between:

Kohinoor Seed Fields India Pvt. Ltd.

Petitioner

VERSUS

Veda Seed Sciences Pvt. Ltd. and Another

Respondents

ORDER PRONOUNCED ON: 09.09.2024

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA

AND

THE HON'BLE JUSTICE M.G.PRIYADARSINI

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether Her Ladyship wishes to
see the fair copy of the Judgment? : No

MOUSHUMI BHATTACHARYA, J

*** THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA**
AND
THE HON'BLE JUSTICE M.G.PRIYADARSINI
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! Counsel for petitioner

: Mr.A.Venkatesh, learned Senior Counsel
Representing Ms.Rubina Khaton.

^ Counsel for respondent No.1

: Mr.Avinash Desai, learned Senior Counsel
Representing Mr.Khamar Kiran Kantamaneni.

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< GIST :

> HEAD NOTE :

? Cases referred :

¹(2024) 5 SCC 815

²(2022) 10 SCC 1

³CMA.No.69 OF 2023

⁴2024 SCC OnLine Cal 1838

⁵(2010) 9 SCC 385

HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
HON'BLE JUSTICE M.G. PRIYADARSHINI

CIVIL REVISION PETITION No.2297 OF 2024

ORDER: *(Per Justice Moushumi Bhattacharya)*

The Civil Revision Petition (CRP) arises out of an order dated 10.04.2024 passed by the Special Court for Trial and Disposal of Commercial Disputes, Ranga Reddy District, at L.B. Nagar.

2. The Commercial Court rejected the objection taken by the revisionist with regard to the Suit filed by the respondent No.1 not being maintainable. The maintainability was mounted on the Suit circumventing the statutory requirement under section 12A of The Commercial Courts Act, 2015 (2015 Act).

3. The Revisionist – M/s.Kohinoor Seed Fields India Pvt. Ltd. (Kohinoor) is the defendant No.1 and the respondent No.2 – M/s.Crystal Crop Protection Pvt. Ltd. (Crystal) is the defendant No.2 in the Suit filed by the respondent No.1 – M/s.Veda Seed Sciences Pvt. Ltd. (Veda). The defendant No.2 (Crystal) took the objection with regard to the maintainability of the Suit before the Trial Court. The present CRP is however filed by the defendant No.1/Kohinoor against the order dated 10.04.2024.

The Dispute

4. The respondent No.1/plaintiff/Veda filed a Suit for permanent injunction for restraining the defendants (petitioner and the respondent No.2) from infringing the Trademark, Trade Dress and Copyright of the plaintiff's trademarks/packaging – "Sadanand", "Tadaka" and "Basant" and from passing off the defendants' products as those of the plaintiff's. The plaintiff claimed damages and rendition of accounts in the said Suit (COS.No.06 of 2024). The plaintiff/Veda also filed an application for temporary injunction restraining the defendants from using the 3 Trademarks or any Marks identical to the plaintiff's trademarks "Sadanand", "Tadaka" and "Basant".

5. The respondent No.2/defendant No.2/Crystal objected to the maintainability of the plaintiff's Suit in the course of the hearing which led to the order under revision. The grounds of objection taken by Crystal are repeated by the Revisionist/Kohinoor before this Court.

6. Learned Senior Counsel appearing for the revision petitioner/defendant No.1 submits that the Trial Court erred in rejecting the objection with regard to the maintainability of the Suit. Counsel relies on section 12A of The Commercial Courts Act, 2015 to urge that a Suit which does not contemplate any urgent interim relief cannot be instituted unless the plaintiff exhausts the remedy of pre-institution mediation. Counsel submits that the plaintiff's Suit does not disclose

any such urgency and hence the Trial Court could not have permitted the Suit to proceed without complying with the mandatory statutory requirement.

7. Learned Senior Counsel appearing for the plaintiff/respondent No.1/Veda places an outline of the relevant facts which led to the filing of the Suit for infringement of Trademarks. Counsel submits that the facts stated in the plaint as well as the application for interim injunction would show that there was great urgency in obtaining the relief prayed for since the revisionist had sold one of the Marks (“Sadanand”) to Crystal on 28.09.2023 and Crystal had also launched an advance booking scheme for the *Kharif* (harvesting) season on 27.12.2023 using the Mark “Sadanand”. Counsel submits that respondent No.1/Plaintiff/Veda owns the said Mark and was hence constrained to file a Suit along with an Interlocutory Application in December 2023.

8. Counsel also submits that the CRP is not maintainable under Article 227 of the Constitution of India since there is no abuse of the fundamental principles of law.

9. We have heard learned counsel arguing against and in support of the order under revision, respectively. We propose to decide the controversy under the following heads.

10. Our conclusions are reflected in the captioned headings.

Mandatory requirement of Pre-Institution Mediation under Section 12A of The Commercial Courts Act, 2015

11. The Commercial Courts Act, 2015 was published in the Gazette of India on 01.01.2016 with effect from 23.10.2015. The Act primarily provided for a hierarchy of Commercial Courts in the Districts and in the High Courts. The Commercial Appellate Division was at the top of the pyramid for adjudication of commercial disputes of a specified value. The Statement of Objects and Reasons in the 253rd Report of the Law Commission of India gives the reasons for enacting The Commercial Courts Act, 2015 which includes accelerating economic growth and improving the image of the Indian justice delivery system.

12. Section 12A of the 2015 Act forms part of Chapter IIIA which was brought into effect on and from 23.10.2015. The relevant part of Section 12A is set out below:

“A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.”

13. The mandate of section 12A would be clear from the word “shall” i.e., a Suit under the 2015 Act, shall not be instituted unless the plaintiff first opts for and exhausts mediation. The embargo is however limited to those Suits which do not contemplate any urgent interim relief. The provision does not specify the mode and manner in which the plaintiff must satisfy the requirement i.e., whether the plaintiff is required to file a separate application for dispensing with

pre-institution mediation or incorporate a prayer for dispensation in the plaint itself. Section 12A also does not contemplate any requirement for obtaining any leave from the Court for instituting a Suit which needs urgent intervention.

Section 12A is silent on the aspect of Application and Leave

14. The statutory silence makes it evident that the assessment of whether a Suit contemplates urgent interim relief falls squarely on the plaintiff to prove and on the Court to determine a finding on the issue. The silence pertains to the manner in which a plaintiff may seek exemption from the bar. The onus is therefore on the plaintiff as well as the Court to fill in the gaps in the mode and manner of exemption when the plaintiff intends to by-pass the statutory embargo which includes filing of a separate application for dispensing with the statutory mandate.

15. This issue was recently considered by the Supreme Court in *Yamini Manohar Vs. T.K.D. Keerthi*¹ which held that the application *per se* is not a condition under section 12A of the 2015 Act and that the pleadings and oral submissions would be sufficient for deciding the issue of whether a Commercial Suit can be filed without exhausting the remedy of pre-institution mediation.

¹(2024) 5 SCC 815

16. Although section 12A(1) of the 2015 Act does not contain the word “Court”, the plain language of the provision points to the Commercial Court to assess the affect of the Suit from the subject matter, cause of action and the relief claimed for determining whether the Suit contemplates urgent interim relief. The Court will look at the pleadings and the prayers in a meaningful manner so as to reach the nub of the dispute shorn of ambiguities and return a finding as to whether the pleadings in the plaint call for urgent intervention.

17. It has now been judicially settled that section 12A is mandatory and any Suit instituted in violation thereof would be visited with rejection under Order VII Rule 11 of The Code of Civil Procedure, 1908: *Patil Automation Private Limited Vs. Rakheja Engineers Private Limited*². In *Tata Consumer Products Limited Vs. ITC Limited*³, a Division Bench of this Court placed emphasis on the mandatory nature of section 12A of the 2015 Act. The decision as to whether the plaintiff has complied with the mandate of section 12A must also be made at the point of institution of the Suit: *Proactive Ship Management Private Limited Vs. Owners and Parties Interested in the Vessel Green Ocean*⁴.

² (2022) 10 SCC 1

³ CMA.No.69 OF 2023

⁴2024 SCC OnLine Cal 1838

The import of Section 12A of The Commercial Courts Act, 2015

18. Section 12A of the Act, read with the case law cited on behalf of the parties, can be summed up thus. The plaintiff seeking to institute a Suit under the provisions of the 2015 Act must first satisfy the Court that the Suit contemplates urgent interim relief. If the Suit contemplates otherwise, i.e., interim relief can wait, the plaintiff must first exhaust the remedy of pre-institution mediation as provided under section 12A (2), (3), (4) and (5) of the 2015 Act.

19. The plaintiff is not required to seek the leave of the Court or file a separate application for dispensing with the statutory mandate under section 12A, i.e., for instituting a Suit circumventing the pre-institution mediation requirement. Therefore, the question of whether the Suit requires urgent interim relief must be answered by the Court based on the substance of the dispute and the relief claimed. The plaintiff must discharge the onus by proving to the Court that the Suit indeed contemplates urgent interim relief and hence needs to be instituted without waiting for pre-institution mediation.

The Cause of Action, Pleading and Relief projected before the Commercial Court in the present case

20. The plaintiff/Veda used the 3 Trademarks for high-quality hybrid Cotton and other seeds. The plaintiff claimed reputation and goodwill in the market in relation to the Trademarks supported with

substantial turnover from the manufacture and sale of the seeds bearing the 3 Trademarks. The plaintiff/Veda sought for relief against the alleged acts of infringement and passing off allegedly committed by the defendant Nos.1 and 2 (Kohinoor and Crystal), of the plaintiff's trademark and copyright in the registered Trademarks "Sadanand", "Tadaka" and "Basant" along with "Gold" variations.

21. The plaintiff's case is also that the plaintiff had business arrangements with the defendant No.1/Kohinoor whereby the parties agreed that the plaintiff would be the exclusive owner and user of the Marks "Sadanand", "Tadaka" and "Basant". The plaintiff also claimed Copyright in the Trade Dress of the products sold under the 3 Marks along with variations.

22. The plaint discloses that the defendant No.1/Kohinoor filed a Suit against the plaintiff on 28.11.2022 in the Delhi High Court alleging infringement of the 3 Marks by the plaintiff and claiming ownership of the same 3 Marks. The Delhi High Court passed an order of injunction against the plaintiff on 01.12.2022 prohibiting the plaintiff from using the Trademarks "Veda Sadanand Gold", "Veda Tadaka Gold" and "Veda Basant Gold". The plaint also avers that the defendant No.1 sold the rights related to "Sadanand" to defendant No.2 and defendant No.2 further launched an advance booking scheme for the products under the brand name "Sadanand".

23. The infringing actions are specified in the Suit and include the advance booking schemes made by the defendant by using a trade dress which is identical to plaintiff's trade dress and exclusive copyrights of the products bearing the 3 Marks. The plaint states that the Suit was filed in urgent circumstances and the plaintiff accordingly reserved its right to bring further documents. The cause of action pleaded in the plaint is said to have arisen from October 2022 to 30.01.2023 when the defendant No.1 launched a second advance booking scheme and finally on 23.11.2023 when the defendant No.1 sold the rights in "Sadanand" to the defendant No.2. The cause of action also covers the defendant No.2 offering its products for sale from 22.03.2023 – 24.11.2023.

24. The prayers in the plaint are for permanent injunction restraining the defendants from using the artistic work/trade dress relating to the Mark "Sadanand", "Tadaka" and "Basant" or from passing off the defendants' Marks/brands as those of plaintiff's and for a direction on the defendant No.2 to render accounts for misuse of the plaintiff's trademark-"Sadanand". The plaintiff also prayed for punitive damages against the defendants.

25. The plaintiff/Veda filed the plaint in December 2023 and an application for interim injunction (I.A.No.123 of 2024) in COS.No.06 of 2024 on 24.01.2024. The plaintiff prayed for temporary injunction against the defendants specifically pleading that the defendants'

infringement of the plaintiff's trademark and trade dress is likely to cause confusion in the minds of potential customers and unless restrained, defendant No.1 (revisionist) would gain an unjust competitive edge resulting in financial set-back to the plaintiff. The plaintiff also pleaded that the plaintiff has taken prompt action without undue delay.

26. The cause of action pleaded in the plaint would show that urgency formed the bedrock of the statements made therein. Apart from the specific pleadings made therein with regard to the defendant No.2/Crystal purchasing the rights of the Trademark - "Sadanand", from the defendant No.1 and the advance booking scheme made by the defendant No.1 and finally the sale of the rights over the Trademark "Sadanand" by the defendant No.1 to the defendant No.2 on 23.09.2023, the plaintiff has also pleaded a continuing cause of action in the alleged infringement of its trademark by the defendant Nos.1 and 2.

The nature of the Suit filed by the Respondent/Plaintiff pre-supposes Urgency

27. Intellectual Property Rights (IPRS) are the rights given to persons over creations of the minds. Intellectual Property encompasses creation of Trademarks, Trade Dress, Copyright, Industrial Designs, Trade Secrets and other rights bearing the insignia of the creator/proprietor of the Trademark, Trade Dress and other

types of intangible properties. It is a wide-ranging array of rights where the creator or the inventor of the creative output claims ownership of the product/process/brand including the right to reap commercial benefit from the use of the product.

28. The urgency of Court intervention arises from the intangible nature of the property. Unlike property in the traditional sense which can be protected from misappropriation by physical means as in posting guards for preventing trespass and occupation of one's house, the proprietor of a Trademark can do little to prevent misuse of the Marks by sale or otherwise unless the proprietor obtains an injunction from a competent Court. Further, misappropriation of intellectual property leads to immediate injury to the proprietor/creator including in the form of financial loss. Unlike other forms of property, where the wrongful appropriation can be quantified, infringement of IPRs is often un-quantifiable as the wrongdoer rides on the reputation and goodwill of the Mark/brand. Therefore, time is always of the essence as even a single "consumption" of the Mark by an unauthorized user can result in immeasurable injury to the owner/proprietor. For instance, a TV commercial using the trademark, trade name, get-up of a rival's product entails repeated viewings/broadcasts which would dilute the brand value of the trademark or create confusion in the minds of the viewers as to the source of the trademark.

The Respondent/Plaintiff could not be diverted to Pre-Institution Mediation

29. The present case involves the alleged misuse of the plaintiff's Trademarks "Sadanand", "Tadaka" and "Basant", by the defendants by way of purchase of the rights in the trademark by the defendant No.2 and also advance bookings floated by the defendant No.1 allegedly using the plaintiff's trademarks. The allegation of misuse shows the basis of the urgency which imbues the cause of action in the Suit. The nature of the Suit, the cause of action and the relief claimed would itself command urgent intervention by the Court. The question is not whether the plaintiff was entitled to protective orders of the Court but whether the Suit instituted contemplated urgent interim relief. Considering the pleadings in the plaint, there is little doubt that the plaintiff could not afford to wait for pre-institution mediation. Diverting the plaintiff to this remedy would have frustrated the Suit.

30. Even otherwise, the urgency with which the plaintiff instituted the Suit would also be evident from the plaintiff not losing any time before filing an application for temporary injunction. It is not a case where the plaintiff went into hibernation after filing the Suit and woke-up from its slumber much later to pray for interim injunction.

31. Moreover, the plaint discloses that the defendant No.1/Kohinoor filed a suit in December 2022 against the plaintiff in the

Delhi High Court alleging the infringement of trademark and passing off and claiming ownership of the 3 Trademarks. Presumably, this accelerated the momentum for the plaintiff to file the present Suit against the defendants.

32. The plaint also alleges the importance of the *Kharif* (harvesting) season for marketing of products with the trademarks in the Southern States, Gujarat and Madhya Pradesh. Therefore, stopping a rival from misappropriating the Trademark before the onset of the *Kharif* season would also entail that the Suit contemplates a sensitive time frame for urgent interim relief.

Conclusion

33. We have no hesitation in holding that the Suit instituted by the plaintiff for infringement of Trademarks and passing off was wholly unsuited for pre-institution mediation since it contemplated urgent interim relief. We have considered the nature of the Suit, the allegations made in the plaint, the cause of action pleaded and the relief claimed by the plaintiff in COS.No.06 of 2024. The plaintiff/Veda, therefore, cannot be held back to first exhaust the remedy of mediation before instituting the Suit in the pretext of section 12A of the 2015 Act.

34. The Trial Court correctly considered the plaintiff's cause of action and the defendants' alleged infringing activities and also the

Suit filed by the defendant No.1 in the Delhi High Court to arrive at the conclusion that the plaintiff was not required to comply with section 12A of The Commercial Courts Act, 2015 before instituting the Suit. The Trial Court found that the plaintiff had made out a case for waiving the mandate of section 12A of the 2015 Act and accordingly rejected the contentions of the defendant No.2/ Crystal.

35. *Tata Consumer Products Limited* (supra) does not assist the petitioner since the decision went up to the Supreme Court in Civil Appeal No.3845 of 2023 whereby the Supreme Court by its order dated 18.05.2023 left the question of law open i.e., in respect of interpretation of section 12A of the 2015 Act. *Yamini Manohar* (supra) was subsequently decided by the Supreme Court on 13.10.2023 and put the matter to rest, namely, that a plaintiff is not required to file a separate application to show urgency or even take the leave of the Court for dispensation of the statutory mandate under section 12A of the 2015 Act.

Is the Civil Revision Petition maintainable?

36. Having perused the order dated 10.04.2024, we do not find that the Trial Court committed any jurisdictional error in rejecting the objections of the defendant No.2. Neither do we find a flagrant abuse of fundamental law and justice or grave dereliction on the part of the Trial Court in passing the order in revision.

37. The scope and ambit of the exercise of power by the High Court under Article 227 of the Constitution of India must be within limits. The High Court is not vested with unlimited prerogative to correct all kinds of wrong decisions made by subordinate Courts made within its jurisdiction. Interference with the orders of Courts or Tribunals should be restricted to cases of serious dereliction of duty or grave miscarriage of justice : *Jay Singh Vs. Municipal Corporation of Delhi*⁵.

38. We do not find any palpable perversity in the order under revision to warrant interference or have it set aside. The reasons for our view have already been stated above.

39. CRP.No.2297 of 2024, along with all connected applications, is accordingly dismissed. There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

M.G.PRIYADARSINI, J

September 9, 2024
BMS

⁵(2010) 9 SCC 385