

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Order Pronounced on: 27<sup>th</sup> November, 2015**

+ **CS (OS) No.3812/2014**

NOVARTIS AG & ANR ..... Plaintiffs  
Through Mr.Hemant Singh, Adv. with  
Ms.Mamta Jha & Dr.Shilpa  
Arora, Adv.

versus

CIPLA LTD ..... Defendant  
Through Mrs.Prathiba M. Singh, Sr.Adv.  
with Ms.Bitika Sharma, Ms.Namrita  
Kochhar & Mr.Harshit Saxena,  
Adv.

**CORAM:  
HON'BLE MR.JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J. (ORAL)**

1. The plaintiffs have filed the present suit for permanent injunction restraining infringement of Patent No.222346 as well as for rendition of accounts/damages, delivery-up etc. The suit was valued for the purposes of Court fee and jurisdiction at Rs.20,07,000/-.
2. The written statement was filed by the defendant on 22<sup>nd</sup> January, 2015 who has also filed the counter-claim on 7<sup>th</sup> April, 2015. Both in the written statement as well as in the counter-claim, the defendant has challenged the validity of the suit patent.
3. In the meanwhile, as noticed in the Official Gazette on 23<sup>rd</sup> October, 2015, the President was pleased to promulgate the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015. By virtue of Section 1(2), the Ordinance extends to the whole of India, except for the State of Jammu and Kashmir. Section 1(3) provides that the Ordinance came into force at once.

4. As per the Ordinance, commercial disputes as mentioned in Section 2(1)(c) of the Ordinance shall be adjudicated as per the provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015.

5. Section 2(1)(c) of the Ordinance defines "Commercial dispute" and sub-Section (xvii) provides that a commercial dispute means a dispute arising out of intellectual property rights relating to registered and unregistered trademarks, copyright, patents, design, domain names, geographical indications and semiconductor integrated circuits.

6. The term "Specified Value" as occurring in the Ordinance is defined as per Section 2(1)(i) of the Ordinance in relation to a commercial dispute as *"....the value of the subject matter in respect of a suit as determined in accordance with Section 12 which shall not be less than one crore rupees or such higher value, as may be notified by the Central Government."*

7. The proviso to Section 3(1) of the Ordinance prohibits constitution of any Commercial Court at the District Level in the territory over which the High Court has ordinary original civil jurisdiction.

8. In terms of Section 4(1) of the Ordinance, in all High Courts having Original Civil Jurisdiction like this Court, Hon'ble the Chief Justice may constitute Commercial Division comprising Single Judges for the purposes of exercising jurisdiction and powers conferred upon such Commercial Division by the Ordinance.

9. In terms of Section 5(1) of the Ordinance, such High Courts are required to constitute Commercial Appellate Divisions which would be Division Benches for the purposes of exercising jurisdiction and powers conferred by virtue of the Ordinance.

10. By orders dated 15<sup>th</sup> November, 2015 and 17<sup>th</sup> November, 2015,

Hon'ble the Chief Justice has constituted the Commercial Divisions having six Benches of Single Judges and the Commercial Appellate Division comprising four Division Benches.

11. In view of Section 4 of the Delhi High Court (Amendment) Act, 2015 and the order passed on 24<sup>th</sup> November, 2015, all suits or other proceedings the value of which exceeds rupees one crore but does not exceed rupees two crores, other than those relating to commercial disputes the specified value of which is not less than rupees one crore (as defined in the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015), pending in this Court on the Original Side, excepting those cases in which final judgments have been reserved, be transferred to the jurisdictional subordinate courts.

12. Section 7 of the Ordinance provides that "*All suits and applications relating to commercial disputes of a Specified 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 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 or section 104 of the Patents Act, 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."*

13. In view of the above, when the matter was taken up on 27<sup>th</sup> November, 2015, the learned counsel for the plaintiffs submits that

though the suit has been valued for the purposes of Court fee and jurisdiction at Rs.20,07,000/-, the same is not to be transferred to the jurisdictional subordinate courts in view of the statutory provision of Section 104 of the Patents Act, 1970 (39 of 1970) and as per the second proviso of Section 7 of the Ordinance, irrespective of its pecuniary value. He further submits that since the defendant has challenged the validity of the said patent, the suit has to be decided by a Commercial Division of the High Court which has the Ordinary Original Civil Jurisdiction.

14. In order to decide the submissions made by the learned counsel for the plaintiffs, it would be appropriate to reproduce the Section 104 of the Patents Act, 1970 which is as under:-

"104. Jurisdiction. – No suit for a declaration under Section 105 or for any relief under Section 106 or for infringement of a patent shall be instituted in any court inferior to a district court having jurisdiction to try the suit:

Provided that where a counter-claim for revocation of the patent is made by the defendant, the suit, along with counter-claim, shall be transferred to the High Court for decision."

15. (a) Section 134(1) of the Trademarks Act, 1999 provides that *"...No suit (a) for the infringement of a registered trade mark; or (b) relating to any right in a registered trade mark; or (c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered, shall be instituted in any court inferior to a District Court having jurisdiction to try the suit."*

(b) Section 62 of the Copyright Act, 1957 provides that –

"62. Jurisdiction of court over matters arising under this Chapter.— (1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other

right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub-section (1), a "district court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain."

(c) Second proviso to Section 22(2) of the Designs Act, 2000 provides that – "Provided further that no suit or any other proceeding for relief under this sub-Section shall be instituted in any court below the court of District Judge."

(d) Section 66(1) of the Geographical Indications of Goods (Registration and Protection) Act, 1999 provides that "No suit, – ....shall be instituted in any court inferior to a district court having jurisdiction to try the suit."

16. It is submitted by the learned counsel for the plaintiffs that the Commercial Division of the High Court has jurisdiction to hear and dispose of intellectual property matters as defined in Section 2(1)(c)(xvii) of the Ordinance irrespective of their pecuniary value i.e. intellectual property matters needs not be of a "Specified Value" to be heard and disposed of by the Commercial Division of the High Court, including the cases particularly pertaining to Patents Act, 1970 and Designs Act, 2000.

17. The 'District Court' has the meaning assigned to that expression by the Code of Civil Procedure Code, 1908. The word 'District' is defined under Section 2(4) of CPC which means *"the local limits of the jurisdiction of a principal Civil Court of original jurisdiction .....and*

*includes the local limits of the ordinary civil jurisdiction of a High Court."*

18. The meaning of 'District Court' is given by the Division Bench of this Court consisting of Hon'ble Mr. Justice Avadh Behari Rohatgi and Hon'ble Mr. Justice G.C. Jain, in the case of ***Penguin Books Ltd. v. M/s India Book Distributors and others***, AIR 1985 Delhi 29 (DB), relevant para 40 reads as under:-

"40. After the conclusion of arguments we asked parties' counsel to address us on the question of jurisdiction in view of the fact that section 62 of the Act requires suit or other civil proceeding in respect of the infringement of copyright to be instituted in the district court having jurisdiction. We heard arguments. The consistent view of the courts in India is that the expression 'district court' will include the High Court having original jurisdiction. [See section 2(4), Civil P.C. and Bakshi Lochan Singh v. Jathedar Santokh Singh, ILR (1971) I Delhi 615 : (AIR 1971 Delhi 277). The Tata Oil Mills Co. Ltd. v. Hansa Chemical Pharmacy, (1979) 2 Delhi 236, D.C.S. Bureau v. United Concern, AIR 1967 Mad 381 and Maheshwar Swain v. Bidyut Prabha Art Press, AIR 1971 Cal 455)."

19. Therefore, it is evident that the High Court is deemed to be a District Court as per definition in Section 2(4) of the CPC, 1908 and will have the power to try the matters. Therefore, the aforesaid interpretation is in consonance with the CPC read with the Patents Act.

20. At present, this Court is only concerned with the facts and law of the present case of infringement of patent. Thus, I am only dealing with the provisions of other Acts.

21. A plain reading of the second proviso of Section 7 also mandates that all the suits in which the validity is challenged by the defendant under Section 104 of the Patents Act, 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 the ordinary original civil jurisdiction.

22. It is an undisputed fact that the present High Court exercises Ordinary Original Civil Jurisdiction. Before passing of the Ordinance, the suit for infringement of patent and designs which were being filed before the District Judge(s) of District Courts have been transferred to this Court, once the patent is challenged in the written statement by the defendants as a defence or by filing of the counter-claim under the Patents Act, 1970 and under Section 22(4) of the Designs Act, 2000. Various matters had been transferred by the District Courts from time to time to the High Court, who had received the same after pleading the defence in the written statement or a separate counter-claim filed by the defendants. Under these circumstances, it is quite clear that under any circumstances, such matters have to be heard and disposed of by the Commercial Division of the High Court which has the Ordinary Original Civil Jurisdiction irrespective of their pecuniary value.

23. The submissions of the learned counsel for the plaintiffs are supported by the learned counsel for the defendant.

24. Under these circumstances, I am of the considered view that the present matter is not to be transferred to the District Court, as the same is deemed to be heard and disposed of by the Commercial Division of the High Court which has the Ordinary Original Civil Jurisdiction. This Court is dealing with the Special Act as well as the deeming provisions. The submissions of the learned counsel for the plaintiffs are accordingly accepted.

25. Copies of this order be given *dasti* to both the parties, under the signatures of the Court Master.

**I.A. No.16004/2015 in CC No.35/2015**

This is an application filed by the plaintiffs (respondents in the counter-claim) for condonation of delay in filing the written statement to the counter-claim. It is stated in the application that there is a delay of 83 days in filing the written statement. The reasons for non-filing of the written statement to the counter-claim have been explained in the application. There is no serious opposition on behalf of the defendant. Accordingly, the prayer is allowed, subject to cost of Rs.20,000/- which shall be deposited by the plaintiffs with the Delhi High Court Library Fund within two weeks from today. The written statement to the counter-claim is taken on the record.

The application is disposed of.

**I.A. No.11218/2015 in CC No.35/2015**

In view of the order passed in I.A. No.16004/2015, the present application has become infructuous and the same is disposed of as such.

**CS(OS) No.3812/2014 & CC No.35/2015**

Replication to the written statement to the counter-claim be filed by the defendant within three weeks. The admission/denial of the documents be conducted by way of affidavit within one week thereafter.

List on 21<sup>st</sup> December, 2015 for framing of issues and directions for trial.

**I.A. No.25391/2014 (u/o 1 R.10 CPC for impleadment), by defendant**

List this application for hearing on the same date.

**(MANMOHAN SINGH)  
JUDGE**

**NOVEMBER 27, 2015**