

company incorporated under the provisions of Indian Companies Act, 1956 and was incorporated on 8.7.1999 under the name of Wockhardt Pharmaceuticals Limited. The name of the company was changed on 28.12.1999 to M/s Wockhardt Limited, the present plaintiff. Plaintiff company is the leading manufacturer of pharmaceutical and medicinal preparations in India. Plaintiff is the owner of registered trademark "SPASMO-PROXYVON". Over the years, the plaintiff had been supplying the medicines continuously in India and have acquired the reputation of being extremely safe and reliable drug by virtue of adherence to strict quality standards maintained by the plaintiff. The defendant is selling its product under the trademark "DEXOPHEN SPAS". Plaintiff has no objection to the user of the said trademark but to the get up of the packaging in respect of the blister pack of the defendant along with identical blue coloured capsules which according to the plaintiff is deceptively similar to that of the plaintiff, and is in violation of the rights of

the plaintiff in its unregistered trademark to its blister packaging and is also infringing the copyright in its artistic work. Plaintiff sought following reliefs against the defendant:-

“(i) For an order for perpetual injunction restraining the Defendant, its servants, retailers, stockists, distributors, representatives and agents from manufacturing, selling, offering for sale, stocking, advertising, directly or indirectly dealing in pharmaceutical preparations under the impugned blister packaging mark annexed as Annexure-B to the plaint or any other packaging mark/marks which are identical/colourable imitation of the Plaintiff’s blister packaging mark annexed as Annexure-A to the plaint amounting to infringement of copyright.

(ii) For an order for perpetual injunction restraining the Defendant, its servants, retailers, stockists, distributors, representatives and agents from manufacturing selling, offering for sale, stocking, advertising, directly or indirectly dealing in pharmaceutical preparations under the impugned packaging mark and blue coloured capsules annexed as Annexure B to the plaint or any other packaging mark and/or colour of capsules which

are identical or deceptively similar to the plaintiff's blister packaging mark and blue coloured capsules annexed as Annexure-A to the plaint amounting to passing off its business and goods as the business and goods of the plaintiff.

(iii) That the defendant be directed to disclose on oath and by way of filing unimpeachable documentary evidence the details about the permission, if any, it has applied for and has obtained from the office of the concerned Drug Controller in regard to the manufacture and sale of its impugned pharmaceutical preparations as well as all documents concerning the production and sale of the same including the names and addresses of its stockists, dealers, representatives, agents, etc. alongwith the cost and quantity of the infringing products sold by the defendant to the said parties and the details of its various movable and immovable assets including its bank.

(iv) For an order for rendition of accounts of profits illegally earned by the Defendant by manufacturing and selling pharmaceutical preparations' under its impugned deceptive blister packaging annexed as Annexure-B to the plaint and for a decree for the sum so ascertained.

(v) For an order for delivery for purposes of destruction of all impugned wrappers, blister packs, blue coloured capsules, lables, dies and any other infringing copies or

media used by the Defendant in pursuit of its illegal activities.

(vi) For costs in the proceedings.

(vii) For such further relief/reliefs to which the Plaintiff may be entitled looking into the facts and circumstances of the case.”

2. Plaintiff valued the suit for purposes of court fees and jurisdiction as follows:-
 - (a) For an order of perpetual injunction at Rs. 200/- for court fees and jurisdiction and the requisite court fees of Rs. 20/- has been affixed.
 - (b) For perpetual injunction restraining passing off, suit is valued at Rs. 200/- for the purpose of court fees and jurisdiction and the requisite court fees of Rs. 20/- has been affixed.
 - (c) For relief of rendition of accounts of profits, illegally earned by the defendant, the plaintiff valued the suit at Rs. 1000/- for purposes of court fees and paid requisite amount of Rs. 150/- and for purposes of jurisdiction the plaintiff valued the suit at Rs. 20 lacs as the plaintiff estimated that such an amount would be founded due to

the plaintiff on accounts being rendered and plaintiff undertook to pay such additional court fee as would be found due when the actual amount is rendered and ascertained by the Court.

- (d) For an order for delivery, for purposes of destruction of wrappers and labels etc/ the plaintiff valued the suit at Rs. 200/- for purposes of court fee and jurisdiction and paid requisite court of fees Rs. 20/-.
 - (e) For an order directing the defendant to disclose on oath all documents pertaining to the permission to manufacture and/or sell its impugned pharmaceutical preparations along with the details of its stockists/dealers/agents/distributors/retailers etc. plaintiff assessed the valuation for purposes of court fees and jurisdiction at Rs. 200/- and paid requisite court fee of Rs. 20/-.
3. The total jurisdictional value has been assessed at Rs. 20,00800/- upon which a court fee of Rs. 230/- has been affixed by the plaintiff.

4. The valuation of the suit for purposes of court fees and jurisdiction for rendition of accounts has been challenged by the defendant during the course of arguments in the appeal and the only issue now left to be determined by us is whether the suit has been properly valued by the plaintiff for purposes of court fees and jurisdiction for the relief of rendition of accounts and whether plaintiff is required to pay the court fees on the valuation of the suit for purposes of jurisdiction which has been valued at Rs. 20 lacs.
5. Mr. Ajay Sawhney, counsel for the plaintiff, submitted that he has valued the suit for purposes of relief of rendition of accounts separately in view of the judgment of the Division Bench of this Court in ***Fenner India Ltd. v. Salbros Enterprises Pvt. Ltd. - 67 (1997) DLT 673, PM Diesels Ltd. v. Patel Field Marshal Industries - 1998 PTC 260*** and unreported decision

in RFA (OS) No. 62/1998, **Wockhardt Veterinary Ltd. v. M/s. Raj Medicos & Anr.** and has urged that by virtue of rule 4 framed under Section 9 of the Suits Valuation Act (hereinafter referred to as Act), the plaintiff has the right to value its suit separately for the purposes of court fees and jurisdiction and therefore, according to him, the valuation of the suit for purposes of court fees and jurisdiction for relief claimed in para 31(c) of the plaint is proper and correct. He has referred to the following judgments of this Court as well as of the Apex Court:-

1. **Tata Oil Mills Co. Ltd. v. Hansa Chemical Pharmacy - PTC (Supply. 1) 438 (Del), ILR (1979) Vol. II Del. 236.**
2. **Globe Super Parts v. Domestic Appliances & Anr. - 1981 (1) PTC 78 (Del).**
3. **Dabur (S.K. Burman) v. Vikas Pharma - 1983 (3) PTC 169 (Del).**
4. **Commercial Aviation & Travel Co. (Inc.) & Ors. v. Vimla Panna Lal - AIR 1986 Delhi 439.**
5. **Abdul Hamid Shamsi v. Abdul Majid & Ors. - AIR 1988 SC 1150.**

- 6. Commercial Aviation & Travel Co. (Inc.) & Ors. v. Vimla Pannalal - MANU/SC/0299/1988, AIR 1988 SC 1636.**
- 7. Eastman Kodak Co. v. M.R. Electronics & Ors. - 1995 (15) PTC 146 (Del).**
- 8. Hindustan Pencils Ltd. v. Swaroop Singh - MANU/DE/1004/1994.**
- 9. Fenner India Ltd. v. Salbros Enterprises Pvt. Ltd. II AD (Del) 201, MANU/DE/0416/1995.**
- 10. Fenner India Ltd. v. Salbros Enterprises Pvt. Ltd. - 1997 (17) PTC 447 (DB), 67 (1997) DLT 673.**
- 11. Frank Educational Aids Pvt. Ltd. v. Fair Deal Marketing - 1997 (17) PTC 492.**
- 12. PM Diesels Ltd. v. Patel Field Marshal Industries - 1998 PTC (18) 260 (DB).**
- 13. Wockhardt Veterinary Ltd. v. M/s. Raj Medicos & Anr. - MANU/DE/0006/1998.**
- 14. Wockhardt Veterinary Ltd. v. M/s. Raj Medicos & Anr. in RFA (OS) No. 62/1998 decided on 21.5.1998.**
- 15. Hindustan Machines v. Love Sales in CS (OS) No. 414/2001 decided on 24.1.2002.**
- 16. Dev Pharmacy v. Nova International - 2003 (27) PTC 395.**
- 17. Pfizer Products Inc. v. B.L. & Co. & Ors. - 2007 (34) PTC 294 (Del).**

***18. Okasa Pharma Ltd. v. Lilly
Icos - 2007 (35) PTC 373 (Del)
(DB)."***

6. Learned counsel for the defendant/appellant Sh. A.K. Verma while controverting the submissions of the learned counsel for the plaintiff/respondent has averred that by virtue of Section 8 of the Act the valuation of the suits for purposes of court fees and jurisdiction has to be the same and the plaintiff cannot arbitrarily value the suit for purposes of jurisdiction to chose the forum for filing his suit in a Court and undervalue the suit for purposes of court fees so as to confer jurisdiction in this Court without paying the requisite court fees and therefore according to him the plaint should have been rejected by the learned Single Judge. It is further submitted that the valuation for relief of rendition of accounts for payment of court fees under Section 7(iv) of the Court Fees Act determines the valuation for purposes of jurisdiction as it has to be the same. Therefore, either the plaintiff should pay the deficient

court fees on the valuation for the purposes of jurisdiction or plaint is liable to be returned back to be presented before the District Judge who has the pecuniary jurisdiction to entertain the suit.

7. Section 7 of the Court Fees Act regulates the computation of court fees payable in certain suits. Section 7(iv) so far as relevant for our purposes reads as follows:

“for accounts.--(f) for
accounts—
according to the amount at
which the relief sought is valued in
the plaint or memorandum of appeal;
In all such suits the plaintiff
shall state the amount at which he
values the relief sought;”

8. As per Section 8 of the Act the value of the suit as determinable for the computation of court fees and the value for purposes of jurisdiction shall be the same. However, Section 9 of the Act acts as a proviso to Section 8 as it empowers the High Court to frame rules

for determination of value of certain suits, if it feels that the valuation as fixed under Section 7 of the Court Fees Act in respect of suits not covered under paragraphs v, vi & x clause (d) of Section 7 of the Act does not admit of being satisfactorily valued. Thus it is clear that valuation of suit for rendition of accounts for purposes of court fees and jurisdiction has to be the same, subject to any rules framed by the High Court regulating valuation for purposes of jurisdiction in exercise of its power under Section 9 of the Act. It is implicit that paragraph 7(iv) requires the plaintiff himself to value the relief he seeks. The only issue for consideration remains; whether the plaintiff has a right to place any valuation that he likes as this paragraph does not itself impose any restriction or condition as regards the valuation by the plaintiff.

9. In ***Sheila Devi and Ors. v. Kishan Lal Kalra and Ors. - ILR 1974 Delhi 491***, where a reference made to the Full Bench of this Court related to whether the

Court has power to interfere in the plaintiff's valuation of relief for the purposes of court fees under Section 7(iv) of the Court Fees Act and if so when would such interference be justified and what should be the criterion for redetermination of the value, it was observed:

“(26) As pointed out in paragraph 15 of the judgment in the case of 5. Rm. Ar. S. Sp. Sathappa Chettiar (supra), (1) the effect of the provision in Section 8 of the Suits Valuation Act is “to make the value for the purposes of jurisdiction dependent upon the value as determinable for computation of court-fees”, and “the computation of court fees falling under Section 7(iv) of the Court Fees Act depends upon the valuation that the plaintiff makes in respect of his claim”. Also, “once the plaintiff exercises his option and values his claim for the purpose of court-fees, that determines the value for jurisdiction” and “not vice versa”. In other words, the value for the purpose of court-fees under Section 7(iv) of the Court-fees Act should be fixed first, and then by virtue of Section 8 of the Suits Valuation Act the same value would be the value for the purpose of jurisdiction. However, if there are rules made by any High Court under Section 9 of the Suits

Valuation Act and the same are applicable, the valuation for the purpose of court-fees under Section 7(iv) of the Court-fees Act will have to be made according to such rules. So far as the rules made, by the Punjab High Court are concerned, it has to be noted that Rules 3 and 4 set out above contemplate separation valuation for the purpose of court-fees and for the purpose of jurisdiction. So, if the said rules are applicable, the valuation for purpose of court-fees would be separate from the valuation for the purpose of jurisdiction as provided in the said rules. It has also to be noted that under Rule 4, in the case of suits to which it applies the value for the purpose of court-fees is to be as determined by the Court-fees Act. That means that as regards suits falling under Section 7(iv) of the Court-fees Act, the value for the purposes of court-fee would be the value as fixed by the plaintiff. The value for the purpose of jurisdiction would be the value fixed by the plaintiff in the plaint "subject to determination by the Court at any stage of the trial". In other words, if Rule 4 applies, the value for the purpose of court-fee would be the value as fixed by the plaintiff in the plaint and the same cannot be interfered with by the Court, while the Value for the purpose of jurisdiction would normally be the value fixed by the plaintiff in the

plaint subject, however, to determination by the Court at any stage of the trial. This is the position that emerges on the view taken by us as regards the scope and effect of paragraph (iv) of Section 7 of the Court-fees Act, reading the said paragraph along with Sections 8 and 9 and the Rules framed under Section 9 of the Suits Valuation Act in case they are applicable.”

10. High Court of Judicature at Lahore had framed rules under Section 9 of the Act, 1887 with regard to the manner of determination of the value of certain types of suits for the twin purposes of court fees and jurisdiction. These rules were made applicable in the High Court of Delhi by virtue of Section 7 of the Delhi High Court Act, 1966. Proviso to Section 7 of the Delhi High Court Act envisaged that the rules with respect to practice and procedure as applicable to the High Court of Punjab would remain applicable to High Court of Delhi until they are varied or revoked by rules or orders made by High Court of Delhi.

11. In ***Tata Oil Mills Co. Ltd. (supra-1)*** the applicability of Rules 3 & 4 as framed under Section 9 of the Act by the High Court of Judicature at Lahore embodied in Chapter III-C of Rules and Orders (Volume I) of the Punjab High Court to the High Court of Delhi came into consideration and it was observed by this court that by virtue of Section 7 of the Delhi High Court Act the said rules were made applicable to the Delhi High Court as well as to the District Courts, Delhi. It was further observed that the valuation placed by the plaintiff with regard to the jurisdiction in a suit different from the valuation of the suit for purposes of court fees governed under Section 7(iv) of the Court Fees Act are in consonance with the said rules. However, the question as to the payment of court fees on the basis of valuation fixed for purposes of jurisdiction was not under consideration before the court in the said case.

12. There is no dispute that the rules contained in Punjab Rules and Orders are applicable to the Union Territory

of Delhi and are enforceable by virtue of Section 7 of the Delhi High Court Act and these rules have been considered in various judgments of this Court as being applicable to the Courts in the Union Territory of Delhi on the original side.

13. Delhi High Court Original Side Rules 1967 were framed by the Delhi High Court in exercise of its powers conferred by Sections 122 and 129 of the Code of Civil Procedure, 1908 and Section 7 of the Delhi High Court Act, 1966 and all other powers enabling it to make the rules. These rules govern the practice and procedure for the exercise of its ordinary original civil jurisdiction. After the enforcement of these rules, the Courts functioning on its original civil jurisdiction had to follow the practice and procedure as laid down in these rules. Chapter 3 speaks of valuation of suits. Chapter 3 Part (C) lays down rules regulating the manner of determining the value of suits for purposes specified in Section 9 of the Act, 1887. These rules were made by

the High Court under the powers conferred under Section 9 of the Act and all other powers in that behalf, for determining for the purposes specified therein, the value of the subject matter of certain classes of suits which do not admit of being satisfactorily valued and for the treatment of such classes of suits as if their subject matter were of the value in the manner stated in the rules so framed. Rules 3 & 4 are relevant to ascertain whether the plaintiff can value the suit for rendition of accounts separately for court fees and for jurisdiction. Rules 3 & 4 read:-

“3. Suits in which the plaintiff in the
 plaint asks for accounts only not being:

(i) Suits to recover the amount which
 may be found due to the plaintiff on taking
 unsettled accounts between him and the
 defendant.

(ii) Suits of either of the kinds described
 in Order XX, Rule 13 of the Code of Civil
 Procedure.

Value—(a) For the purposes of the Rs.
 Court-fees Act, 1887 200

(b) For the purposes of the
 Suits Valuation Act, 1887, and
 the Punjab Courts Act, 1918
1,000

4. (i) Suits in which plaintiff in the
 plaint seeks to recover the amount which

may be found due to the plaintiff in taking unsettled accounts between him and the defendant.

(ii) Suits of either of the kinds described in Order XX, Rule 13 of the Code of Civil Procedure:

(a) Value for the purpose of Court-fee (a) As determined by the Court-fees Act, 1870.

(a) Value for the purpose of jurisdiction (b) For the purpose of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918, as valued by the plaintiff in the plaint, subject to determination by the Court at any stage of the trial."

14. Rules 3 & 4 are identical to the Rules 3 & 4 as contained in Chapter III-C of the Rules and Orders (Vol. I) of the Punjab High Court were made applicable to the Union Territory of Delhi by virtue of Section 7 of the Delhi High Court Act.

15. Since the High Court of Delhi has framed rules under Section 9 of the Act empowering the plaintiff to value its suit for the purposes of court fees as determined by the Court Fees Act and to value for purposes of jurisdiction as valued by the plaintiff in the plaint separately. Valuation for purposes of jurisdiction so fixed by the plaintiff in the plaint is subject to determination by the Court at any stage of the trial.
16. It is pertinent to mention here that in regard to suits for accounts there is divergence of judicial opinions as to whether the plaintiff is entitled to put any valuation he likes. These opinions are not uniform as in some of the cases it has been held that the plaintiff is free to give his own valuation and in some other cases it has been held that the plaintiff is not entitled to give an arbitrary valuation without having any link or connection with the relief in question.

17. Learned counsel for the plaintiff has referred to ***Fenner India Ltd.*** case (supra-9) while submitting that suit for rendition of accounts is governed by Rule 3 as trademark, copyright and patent cases do not fall in any of the two categories contemplated by Rule 4. However, this judgment was set aside by the Division Bench in FAO No. 204/95 (***Fenner India Ltd.*** case (supra-10)) vide its order dated 9.4.1997 and it was observed that the nature of passing off action is such that the relief sought can only be for rendition of accounts of profits made consequent upon the breach of copyright and therefore, such suits are governed by rule 4 framed by the High Court and the plaintiff can value the suit for the purposes of jurisdiction as the plaintiff wishes it to be valued. Therefore, this judgment is of no help to the case of the plaintiff nor it helps the Court in reaching to a just conclusion, if the plaintiff has a right to value the suit for purposes of jurisdiction separately other than the valuation for purposes of court fees.

18. In ***Abdul Hamid Shamsi (supra-5)*** the Supreme Court while interpreting Section 7(iv)(f) of the Court Fees Act and Section 9 of the Act observed:-

“7. It is true that in a suit for accounts the correct amount payable by one party to the other can be ascertained only when the accounts are examined and it is not possible to give an accurate valuation of the claim at the inception of the suit. The plaintiff is, therefore, allowed to give his own tentative valuation. Ordinarily the Court shall not examine the correctness of the valuation chosen, but the plaintiff cannot act arbitrarily in this matter. If a plaintiff chooses whimsically a ridiculous figure it is tantamount to not exercising his right in this regard. In such a case it is not only open to the Court but its duty to reject such a valuation. The cases of some of the High Courts which have taken a different view must be held to be incorrectly decided.” (emphasis supplied).

19. Learned counsel for the plaintiff has further relied upon ***Commercial Aviation & Travel Co. (Inc.) case (supra-4)***. In this case the view expressed by the Full Bench of this Court in case of ***Sheila Devi and Ors.***

case (supra) was considered and interpreted and it was held that the plaintiff is entitled to value the suit for the purposes of Court fee at fixed value and for the purposes of jurisdiction, he can fix estimated value which he thinks that may be found due. Paras 7 and 13 of the judgment are relevant which read:-

“7. After noticing the entire case law, the Full Bench of this Court took the view that paragraph (iv) of Section 7 of the Court Fees Act gives a right to the plaintiff in any of the suits mentioned in the clauses of that paragraph to place any valuation that he likes on the relief he seeks, and the court has no power to interfere with plaintiff’s valuation for purposes of court fees. In view of Section 9 of Suits Valuation Act, the value for purposes of jurisdiction follows the value fixed for purposes of court fees. The value for purposes of jurisdiction was, however, subject to rules, if any, framed under Section 9 of the Suits Valuation Act.

13. The Full Bench noted the various words used in various parts of Order 7 of the Code. Order 7 rule 1(i) of the Code speaks of the “value of the subject matter”. Order 7 Rule 2 of the Code speaks of the “amount sued for”. Paragraph (iv) of Section 7 of the Court-fees Act speaks of, “the amount at which he values the relief”.

The Full Bench considered the entire scheme of Order 7 of the Code along with provisions of Section 7(iv) of the Court Fees Act, 1870 and came to the conclusion that paragraph (iv) of Section 7 of the Court-fees Act gives a right to the plaintiff to place any value that he likes on the relief he seeks and the Court has no power to interfere with the plaintiff's value. It was also held that this view is quite inconformity with the nature of the suit mentioned in clauses (a) to (t) of paragraph (iv) of section 7 of the Court-fees Act."

20. Thus, it is clear that while observing findings of the Full Bench in ***Sheila Devi and Ors. case (supra)*** interpreting Section 7(iv)(f) of the Court Fees Act read with Section 9 of the Act as correct, the Court declined to refer the matter to a larger bench, though the rules framed under Section 9 of the Act by the High Court of Delhi for valuation of the suit for the purposes of jurisdiction have not been specifically dealt with.

21. Against this order dated 14.3.1986, Civil Appeal No. 2137/1988 was filed (***Commercial Aviation & Travel***

Co. (Inc.) case (supra-6)). The question of valuation of the suit for purposes of court fees and jurisdiction came up for consideration in this appeal before the Supreme Court and it was held that when there is an objective standard of valuation, to put a valuation on the relief ignoring such objective standard, might be a demonstratively arbitrary and unreasonable valuation and the Court would be entitled to interfere in the matter. But if there is no material or objective standard, the plaintiff's valuation has to be accepted. Reference was made to ***Abdul Hamid Shamsi (supra-5)*** to conclude that plaintiff cannot whimsically choose a ridiculous figure for filing the suit most arbitrarily where there are positive materials and/or objective standards of valuation of the relief appearing on the face of the plaint as these materials or objective standards would also enable the court to determine the valuation for the purpose of Order 7 Rule 11(b) of the CPC. It held:

“9. In this connection, we may refer to the provision of Order VII, Rule II(b) of the CPC, which provides, inter alia, that the plaint shall be rejected where the relief claimed is undervalued and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so. It is manifestly clear from the provision of Order VII, Rule II(b) that a Court has to come to a finding that the relief claimed has been undervalued, which necessarily means that the Court is able to decide and specify proper and correct valuation of the relief and, after determination of the correct value of the relief, requires the plaintiff to correct his valuation within a time to be fixed by the Court. If the plaintiff does not correct the valuation within the time allowed, the plaint is liable to be rejected. The question is whether in a suit for accounts simpliciter, the Court can come to a finding as to the proper and correct value of the relief until the final determination is made. In our opinion, ordinarily it is not possible for the Court at a preliminary stage to determine the value of the relief in a suit for accounts simpliciter. If the Court is itself unable to say what the correct valuation of the relief is, it cannot require the plaintiff to correct the valuation that has been made by him. Indeed, in a suit for accounts it is also difficult for the Court to come

to a finding even as to the approximate correct valuation of the relief. In such a case, the Court has no other alternative than to accept plaintiff's valuation tentatively."

It further held:

"23. We are also of the view that the plaintiff cannot whimsically choose a ridiculous figure for filing the suit most arbitrarily where there are positive materials and/or objective standards of valuation of the relief appearing on the face of the plaint. These materials or objective standards will also enable the Court to determine the valuation for the purpose of Order VII, Rule 11(b) of the CPC. Indeed, in Abdul Hamid Shamsi's case, it has been noticed by this Court that the plaintiff has laid a claim to a sum of Rs. 1,26,796.72, besides another sum of over Rs. 84,000 as his share in the profit for a particular period by reference to the proceeding of the Income-Tax Department mentioned in paragraph 11 of the plaint. Further, a copy of the profit and loss account for the calendar year 1979 was annexed by the plaintiff to the additional affidavit filed on his behalf before this Court, which also gave positive indication as to the valuation of the relief. The plaintiff in that case valued the suit without making any reference whatsoever to those materials or

objective standards available to him and in the context of these facts, this Court made the above observation. But, if there be no material or objective standard, the plaintiff's valuation has to be accepted."

22. Yet in ***Dabur's case (supra-3), Sheila Devi and Ors. case (supra)*** was followed and it was observed that plaintiff can value the relief for rendition of accounts at one figure for the purpose of court fees and for purposes of jurisdiction he can value it at a different figure as law permits him this freedom and the Court cannot question the valuation fixed by the plaintiff at its own choice unless the Court during the course of trial comes to the conclusion that the plaintiff's valuation is arbitrary.
23. In ***Globe Super Parts case (supra-2)*** a different view was taken by the Single Judge of this Court when he observed that the valuation of the suit for the purposes of court fees and jurisdiction has to be the same in view of Section 8 of the Act. However, this view was not

followed in any of the subsequent judgments as already discussed above and shall be referred to by us hereinafter.

24. In ***Eastman Kodak Co. case (supra-7)*** the Single Judge of this Court followed the proposition of law as laid down in ***Sheila Devi and Ors. case (supra)*** and ***Abdul Hamid Shamsi (supra-5)*** to conclude that in a case where the valuation given by the plaintiff is arbitrary and undervalued, there are two courses open to the Court either to reject the valuation fixed by the plaintiff in terms of observations made by the Supreme Court in ***Abdul Hamid Shamsi (supra-5)*** or to invoke the provisions of Order 7 Rule 11 CPC to give time to the plaintiff to make good the deficiency in payment of the court fees. The said case was filed by Eastman Kodak Company seeking relief of permanent injunction against the defendants from using the trademark 'KODAK' or any other trade mark deceptively similar thereto and for rendering the account of profits earned

by the defendants from the use of the trade mark KODAK, upon or in relation to its goods and business. The Court found that the sales of the plaintiff were in several hundred crores of rupees as stated in the plaint and the plaintiff also averred that a sum in excess of sum of Rs. 5,000/- might be found due from the plaintiff and the plaintiff was running business in crores, the Court directed the plaintiff make good deficient court fees on the relief for rendition of accounts.

25. In ***Hindustan Pencils Ltd. Case (supra-8)*** learned Single Judge of this court followed the views expressed in ***Commercial Aviation case (supra-6)***.
26. In ***Frank Educational Aids Pvt. Ltd. (supra-11)*** rationale as laid down ***Commercial Aviation case (supra-6)*** and ***Abdul Hamid Shamsi (supra-5)*** was followed by the learned Single Judge, rather reference has also been made to ***M/s Globe Super Parts (supra-2)*** keeping in view the facts and circumstances before

the Court in the said case being similar to the facts stated in ***M/s Globe Super Parts***. While returning the plaint the learned Single Judge considered the prima facie evidence as pleaded in the plaint and calculated the loss which might be suffered by the petitioner not more than Rs. 4,30,000/-.

27. In ***PM Diesels Ltd. (supra-12)*** the opinion of the Division Bench in ***Fenner India Ltd. case (supra-10)*** was accepted and it was observed that the said judgment to the extent as held that this court has no pecuniary jurisdiction, deserves to be reversed, is correct and the Court following this view it held that in suit for unsettled accounts, fixed court fee is payable and for jurisdictional purposes such a suit can be valued as fixed by the plaintiff. In this case the challenge was to the territorial jurisdiction of this Court to entertain the suit filed by the petitioner PM Diesels Ltd. and the learned counsel for the defendant while challenging the territorial jurisdiction of this Court had also relied upon

Single Bench's decision in ***Fenner India Ltd. case (supra-9)*** and had urged that the valuation for purposes of jurisdiction in a suit for rendition of accounts has to be fixed at Rs. 1,000/- as per Rule 3 of the rules framed by the High Court under Section 9 of the Act. Though the court was of the opinion that the valuation of the suit for the purpose of court fees and jurisdiction has to be in accordance with Rule 3 of the rules framed by the High Court under Section 9 of the Act, with all respect as discussed above this view as laid down by learned Single Judge was overruled by the Division Bench of this Court in First Appeal No. 204/1995 (***Fenner India Ltd. case (supra-10)***). It is also pertinent to mention that the controversy in this case arose on account of an application for grant of temporary injunction pending disposal of the suit and the said application was dismissed with the observations that plaintiff had not been able to show prima facie that this court had territorial jurisdiction as well as pecuniary jurisdiction to entertain the suit.

28. In so far as the judgment in the case of **P.M. Diesels** **(supra-12)** is concerned, the relevant portion of the said judgment reads as follows:

“The plaintiff has valued the relief of rendition of accounts in the suit for the purposes of court fees at Rs.200/- and the valuation for the purpose of jurisdiction has been fixed at Rs.5,01,000/- undertaking to pay the additional court fee for relief of rendition of accounts when the exact amount due from the defendants is ascertained. Relying upon an earlier Single Bench decision by the impugned order it was held that for purposes of jurisdiction in respect of claim for rendition of accounts the suit had to be valued at Rs.1,000/- and, therefore, the High Court had not pecuniary jurisdiction to entertain the Suit. Learned Counsel for the respondents, in view of Division Bench decision of this court in the case of *Fenners India Ltd. v. Salbros Enterprises Pvt. Ltd.* 1997 IV AD (Delhi) 24, has rightly conceded that the impugned judgment to the extent it holds that this court has no pecuniary jurisdiction deserves to be reversed. In this view, therefore, we hold that in suit for unsettled accounts, fixed court fee is payable and for jurisdictional purposes such a suit can be valued in terms of valuation as fixed by the plaintiff.”

29. The above judgment follows the judgment in the case of **Fenners India (supra-10)** and consequently this Court must consider the reasoning contained in **Fenner India's** judgment.

30. In **Fenner India Ltd. v. Salbros Enterprises Pvt. Ltd. (supra-10)** the Division Bench of this Court had held as follows:

“3. The nature of passing-off is such that the relief sought can only be for rendition of accounts of profits made consequent upon the breach of copyright. The owner of copyright asserts his common law right to be compensated for loss of profits in a passing off action. Only unsettled accounts can be sued for. As the suit has to be for unsettled accounts, as required by the provisions of the Code of Civil Procedure, 1908, an estimate of profits which are likely to be recovered is set out in the plaint itself. For a claim based on unsettled accounts, under Rule 4 aforesaid, the court fee payable is a fixed court fee which is to be paid on the plaint. It is

not disputed that originally fixed court fee was paid.

4. We do not agree with the view expressed by the learned Single Judge that a suit for passing-off in which the accounts are sought, would be governed by Rule 3. The nature of suit for passing-off is such that there is no contractual relationship between the parties to the suit. The plaintiff usually asserts that he has a statutory monopoly and that statutory monopoly has been breached, and as a consequence of this breach, profits that have been made by the defendants which have to be determined and paid over to the owner of copyright, the plaintiff.

5. We also do not agree with the view expressed by the learned Single Judge that for the purposes of jurisdiction, a suit for passing-off has to be valued at Rs.1000/- for the reason that in case of unsettled accounts suit, Rule 3 of the Rules framed under Section 9 of the Suits Valuation Act has no application whatsoever. Such suits are governed by Rule 4 of the Rules framed by the High Court and the plaintiff can value the suit for the purpose of jurisdiction as he wishes it to be valued.

6. A Division Bench of this Court in *M/s Commercial Aviation and Travel Co. (Inc.) v. Vimla Panna Lal*, AIR 1986 Delhi 439, has already held that

suit for unsettled accounts have to be value under Rule 4. While so holding, it followed a Full Bench judgment of this Court in ILR 1974 (2) Delhi 491 as also the judgment of the Supreme Court in AIR 1979 SC 989.”

31. In ***Wockhardt Veterinary Ltd. (supra-13)*** decided on 20.4.1998 the learned Single Judge of this Court while following his view taken by him in ***Eastman Kodak Co. case (supra-7)***, observed:

“8. No doubt law gives a right to the plaintiff to value the suit for the relief of rendition of account and for the purpose of jurisdiction separately. But whether the plaintiff has exercised that right to divest the right forum or has artificially invested this court with the jurisdiction, is a point which has to be pondered over. Whether the plaintiff has got the right to value the relief for jurisdiction in an arbitrary and whimsical manner? Whether the plaintiff has a right to value the suit without laying down any foundation in the plaint merely to exclude the jurisdiction of a Court which otherwise would have got the jurisdiction but for three lines written in para 23(c) of the suit? These are certain issues which have to be addressed.

9. There cannot be two opinion with the proposition of law as enunciated by the Supreme Court as well as this Court in view of the decisions cited by the learned counsel for the plaintiff that plaintiff can pay fixed court fee for unsettled accounts and for jurisdiction purposes such a suit can be valued in terms of valuation fixed by the plaintiff.

10. In the case before me the valuation for the purpose of jurisdiction has been quantified with the sole objective to confer jurisdiction on this Court as this Court will have pecuniary jurisdiction if the valuation of the subject matter is over Rs. 5 lakhs, otherwise in the normal course, the jurisdiction would lie with the District Judge. No doubt law provides that in case of relief for rendition of account when the amount is not ascertained the plaintiff cannot be asked to give a specific and ascertained figure of the amount on which relief is sought in the suit. But that does not give a licence to plaintiff to give a wholly arbitrary and unreasonable figure so as to divest a Court which has got the jurisdiction to try the suit and to invest a Court which for these aforesaid three lines would not have the jurisdiction to try the suit by giving a higher valuation so as to bring suit within the pecuniary jurisdiction of this Court.

11. I would like to mention that peculiar situation has arisen in Delhi as most of the High Courts in the country do not have Original Side Jurisdiction. The suit in relation to infringement, passing off etc. is filed for obtaining perpetual injunction. Suit has to be filed before the District Judge but to bring this suit to be maintained in this Court, relief for rendition of account is added wherein relief for rendition of account is valued at Rs. 200/- and for the purpose of jurisdiction the relief is valued at more than 5 lakhs rupees, whole exercise is for maintaining the suit in this Court and that is why figure of jurisdictional value is fixed over Rs. 5 lakhs so as to bring the suit within the pecuniary jurisdiction of the Original side of the Delhi High Court. There is neither any nexus nor rational or objectivity and not even a whisper in the plaint as on what basis the approximation value of jurisdiction has been arrived at by the plaintiff at Rs. 5,50,000/-. Least a plaintiff, if he feels and takes advantage of the settled proposition of law to value the suit for the purpose of jurisdiction differently than for the purpose of relief, ought to have given some reasons in the plaint, which I find totally missing in the case before hand. This fixation of valuation is demonstrably arbitrary, given to oust the jurisdiction of the Court of the first instance, i.e. the Court of the District Judge. Relief of

rendition of account is sought in this suit, which is essentially a suit for injunction and to maintain this suit in this Court in paragraph 23(c) an averment has been made that for the purpose of jurisdiction, the value is fixed at Rs. 5,50,000/-. The foundation of suit emanates from the breach of legal obligation regarding copyright, trade mark and passing off, where the first and foremost relief is the relief of injunction. The relief for rendition of account is only to bring the suit within the ambit of Section 9 of the Suits Valuation Act, Court Fees Act, read with Rules 3 & 4 of the Punjab & Haryana High Court Rules. The valuation in this suit over Rs. 5 lakhs is arbitrary and whimsical."

32. Section 15 of the Code of Civil Procedure which speaks of institution of the suits in the Court of lowest grade competent to try was also interpreted in the following manner:-

"Thus when there are two forums available to the plaintiff, the plaintiff has to file the suit at the Court of the lowest grade. The reasoning of Section 15 of the Code of Civil Procedure that every suit should be instituted in the Court of the lowest grade competent to try it, is intended for the protection of the Courts of higher grade from over-burdening. The

suit like the one before me has been filed by fixing a whimsical and arbitrary valuation with no material whatsoever. Thousands of suits are pending on the Original Side of the High Court. Litigants are waiting for more than 20 years for their substantive suits to be heard and rights determined but on account of three lines in the plaint all these helpless litigants, having paid Court fee, are sidelined to decide an interlocutory application. This is not what the rule of law is meant for. Unnecessarily overburdening the Court system when there is efficacious machinery available, the ingenuity of making averment in the plaint regarding fixation of the valuation for the purpose of jurisdiction, in my opinion, will not invest this Court with the jurisdiction to try the suit. For the reasons stated above, the plaint is returned with a direction that the same may be filed in the Court of District Judge having jurisdiction to deal with the matter.”

33. With respect we fully agree and concur with the above view taken by the learned Single Judge and adopt his reasoning.
34. However the Division Bench of this Court deciding the appeal against the judgment of the learned Single Judge in ***Wockhardt Veterinary Ltd. case (supra-13)*** relied

upon ***Fenner India Ltd. case (supra-10)*** and set aside the judgment thereby allowing the appeal with a very short order. One of the judges sitting in appeal against this order was also one of the judges in ***Fenner India Ltd. case (supra-10)***.

35. Learned counsel for the respondent has also referred to ***Hindustan Machines (supra-15)***. This case does not help the respondent in any manner as the facts and circumstances of that particular case were considered while disposing of the application and reviving the suit for trial as the only relief claimed in the application was for revival of the proceedings.

36. In ***Dev Pharmacy (supra-16)*** an application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint was considered along with the application of the defendant under Order 7 Rule 11 CPC for return of the plaint on the plea that this court lacked pecuniary jurisdiction to entertain the suit. The Court

found that the valuation for purposes of court fees and jurisdiction is correct in view of Rule 4 of the rules framed by the High Court under Section 9 of the Act.

37. In ***Okasa Pharma Ltd. case (supra-18)*** the Division Bench of this Court considered the order passed by the learned Single Judge allowing the application of the respondent filed under Order 6 Rule 17 CPC for amendment of the plaint. In the said case the plaintiff had valued the suit for the purposes of jurisdiction at Rs. 1 Crore and for the purposes of court fees at Rs. 20,00,050/-. By way of amendment the plaintiff sought reduction in the value of the suit for purposes of jurisdiction to Rs. 20,00,050/-. This amendment was allowed and the appeal was dismissed. In this case there was no occasion for the court to consider if the valuation for purposes of court fees was undervalued and that plaintiff had properly assessed the jurisdictional value of the suit in accordance with the

rules framed by the High Court of Delhi under Section 9 of the Act.

38. In ***Pfizer Products Inc. case (supra-17)*** the Single Judge of this Court followed the rationale governing the principles for valuation of the suit for purposes of court fees and jurisdiction as laid down in ***Sheila Devi and Ors. case (supra)***, ***Commercial Aviation case (supra-6)***, ***Abdul Hamid Shamsi case (supra-5)*** and ***Eastman Kodak Co. case (supra-7)*** and also ***Automatic Electric Limited v. R.K. Dhawan & Anr. - 57 (1995) DLT 49*** and it was observed that when there is basis available for valuation for purposes of Court fee, it is not open to the plaintiff to value the suit arbitrarily. He also observed that there could not be a doubt about the proposition that insofar as the valuation for purposes of Court fees is concerned in a case for rendition of accounts under Section 7(iv) of the Court Fees Act, it has been left to the plaintiff to affix valuation. But at the same time this valuation cannot

be arbitrary and if the Court has reasonable material and there are objective standards of valuation to come to the conclusion that the valuation is arbitrary, it has the power to reasonably value the reliefs correctly on certain definite and positive materials and direct the plaintiff to pay the deficit court fees. Learned counsel for the appellant/defendant has also referred to this very judgment to support his contentions that plaintiff/respondent should be directed to pay the deficit court fees as he has undervalued the suit for purposes of court fees.

39. Learned counsel for the defendant/appellant has also referred to ***Bharat Sanchar Nigam Ltd. v. All India Bharat Sanchar Nigam Executives' Association (Regd.) & Ors. - 130 (2006) DLT 195.*** While relying upon ***Sheila Devi and Ors. case (supra), Commercial Aviation case (supra-6), Wockhardt Veterinary Ltd. (supra-13)*** and other cases as referred to in the judgment, the learned Single Judge of

this Court in a suit for injunction where the valuation for purposes of pecuniary jurisdiction was fixed at Rs. 25 lacs, held that no one can be permitted to exercise discretion in such an arbitrary manner which may even be opposed to the public policy. It was further observed that in normal course, the plaintiff would be required to institute the suit in the Court of lowest grade competent to try it in terms of Section 15 of the Code of Civil Procedure, but the exceptions to such rule are founded on the plaintiff's intention to value the suit for the purposes of pecuniary jurisdiction at a higher amount. But for the averment in the plaint the plaintiff would not have been able to institute the case in this Court. The Court directed the plaintiff to pay the ad valorem court fee on valuation fixed for jurisdictional purposes at Rs. 25 lacs.

40. In our view, once the jurisdiction of this Court is resorted to by the plaintiff by putting a jurisdictional value of at least 20 lakhs so as to litigate in this Court,

then such a litigant must pay court fees upon such jurisdictional value ascertained by him. In this context, we may profitably refer to the reasoning contained in the judgment of a learned Single Judge of this Court in **Wockhardt Veterinary Ltd. v. M/s Raj Medicos & anr. (Supra-13)**, which reads as follows:

“The Apex Court in *M/s Commercial Aviation and Travel Company & ors. v. Vimal Pannalal* held as follows:

“We are also of the view that the plaintiff cannot whimsically choose a ridiculous figure for filing the suit most arbitrarily where there are positive materials and/or objective standards of valuation of the relief appearing on the face of the plaint. These materials or objective standards will also enable the Court to determine the valuation for the purpose of Order VII, Rule 11(b) of the Code of Civil Procedure. Indeed, in *Abdul Hamid Shamsi's* case, it has been noticed by this Court that the plaintiff has laid a claim to a sum of Rs.1,26,796.72, besides another sum of over Rs.84,000/- as his share in the profit for a particular period by reference to the proceeding of the Income-tax Department mentioned in paragraph 11 of the plaint. Further a copy of the profit and loss account for

the calendar year 1979 was annexed by the plaintiff to the additional affidavit filed on his behalf before this court, which also gave positive indication as to the valuation of the relief. The plaintiff in that case valued the suit without making any reference whatsoever to those material or objective standards available to him and in the context of these facts, this Court made the above observation. But if there be no material or objective standard, the plaintiff's valuation has to be accepted."

Thus when there are two forums available to the plaintiff, the plaintiff has to file the suit at the Court of the lowest grade. The reasoning of Section 15 of the Code of Civil Procedure that every suit should be instituted in the Court of the lowest grade competent to try it, is intended for the protection of the Courts of higher grade from over-burdening. The suit like the one before me has been filed by fixing a whimsical and arbitrary valuation with no material whatsoever. Thousands of suits are pending on the Original Side of the High Court. Litigants are waiting for more than 20 year for their substantive suits to be heard and rights determined but on account of three lines in the plaint all these helpless litigants, having paid Court fee, are sidelined to decide an interlocutory application. This is not

what the rule of law is meant for. Unnecessarily overburdening the Court system when there is efficacious machinery available, the ingenuity of making averment in the plaint regarding fixation of the valuation for the purpose of jurisdiction, in my opinion, will not invest this Court with the jurisdiction to try the suit. For the reasons stated above, the plaint is returned with a direction that the same may be filed in the Court of District Judge having jurisdiction to deal with the matter.”

41. The reasoning of the Division Bench in appeal reversing the said judgment is as under:

“The judgment of the Hon'ble Single Judge has gone contrary to the provisions of order VII Rule 2 CPC and also judgments of Division Bench of this Court reported in 67 (1997) DLT 673 and 1998 PTC (18) 260 (DB). The said judgments have been noted and distinguished without there being any point of distinction. The judgment of the Hon'ble Single Judge is set aside. The suit is directed to be sent back to the Hon'ble Single Judge for trial in accordance with law.”

42. With great respect to the above judgment of the Division Bench, we have noticed the view taken by the Division Bench where the only reason given is citing the cases of **Fenner India Ltd. v. Salbros Enterprises Pvt. Ltd. (supra-10)** and **P.M. Diesels Ltd. v. Patel Field Marshal Industries (supra-12)**. Significantly, in the above judgment there is no reference to the judgment of the Supreme Court in **Commercial Aviation (supra-6)** case relied upon and extracted by the learned Single Judge had not been noticed by the Division Bench.

43. The relevant portion of the said judgment of the Hon'ble Supreme Court in **Commercial Aviation (supra-6)** case is as follows:

“23. We are also of the view that the plaintiff cannot whimsically choose a ridiculous figure for filing the suit most arbitrarily where there are positive materials and/or objective standards of valuation of the relief appearing on the face of the plaint. These materials or objective standards will also enable the Court

to determine the valuation for the purpose of Order VII, Rule 11(b) of the Code of Civil Procedure.”

44. In our view, the objective standard contemplated by the above judgment of the Supreme Court is best illustrated by the plaintiff's own valuation for jurisdictional purposes. In fact, there can be no better objective standard than the plaintiff's own jurisdictional evaluation. We interpret the impact of the phrase “relief appearing on the face of the plaint” employed by the Supreme Court to mean that when the plaintiff has arrived at a basis of a figure for claiming damages, this furnishes not only an objective standard but also positive material in the form of averment of the plaintiff itself in the plaint to fix the valuation of the suit of the basis of the preliminary estimate of damages.
45. Thus, in our view, the Division Bench in **Wockhardt v. M/s Raj Medicos (surpa-14)** while reversing the learned Single Judge's judgment has failed to notice

and apply the judgments of the Hon'ble Supreme Court in **Commercial Aviation (supra-6)** and **Abdul Hamid Shamsi (supra-5)**. In fact, the Division Bench in **Fenner India Ltd. (supra-10)** has relied upon the **Commercial Aviation (supra-4)** judgment of this Court reported in AIR 1986 Delhi 439, without noticing the judgment of the Supreme Court in appeal and in particular para 23 thereof in **Commercial Aviation (supra-6)**. Even on this ground, the judgment of the Division Bench cannot be relied upon in view of the Supreme Court's judgment in **Commercial Aviation (supra-6)**.

46. In our view, the said reasoning does not even refer to let alone follow the reasoning of the Hon'ble Supreme Court as laid down in **Commercial Aviation (supra-6)**. On the contrary, this judgment which relies upon the **Commercial Aviation (supra-4)** has failed to notice the law laid down in para 23 (extracted earlier) of the judgment of the Supreme Court, reported in AIR

1988 SC 1636, in appeal against the said judgment. Furthermore, the learned Single Judge of this Court in **Pfizer Products, Inc. v. B.L. & Co. & ors. (supra-17)**, had considered the entire case law and come to the following conclusion:

“7. The controversy falls under a narrow legal compass. Certain common judgments have been referred by learned Counsel for the parties in this behalf. The first judgment referred to is of the Apex Court in M/s Commercial Aviation & Travel v. Vimla Pannalal, 30 (1986) DLT 46: AIR 1988 SC 1636. Learned counsel for the plaintiff emphasizes the fact that the Supreme Court has laid down that it is almost impossible for a plaintiff to value the relief correctly in suit for accounts and so long as the account is not taken, it cannot be determined as to what amount, if at all, would be found payable to the plaintiff on such accounting taking place. The judgment discusses the question of valuation and provisions relating to the rejection of the plaint under Order 7 Rule 11(b) of the Code. It has been emphasized that insofar the provisions of Section 7(iv) of the Court Fees Act is concerned, the

Legislature has left the question of valuation of the relief sought in the plaint or memorandum of appeal to the plaintiff. The Legislature has also not laid down any standards for valuation in the Court Fees Act and under Section 9 of the Suits Valuation Act the High Court may frame rules for valuation of suits referred to in Section 7 (iv) of the Court Fees Act. The rules of the Punjab High Court as applicable to Delhi do not lay down any standards of valuation in such cases. In such cases the Court has no other alternative than to accept the plaintiff's valuation tentatively. However, at the same time it has been emphasized that the valuation cannot be arbitrary and where there are objective standards of valuation or the Court can reasonably value the reliefs correctly on certain definite and positive materials, the plaintiff will not be permitted to put an arbitrary valuation dehors such objective standards or materials.

8. In the end, learned counsel emphasizes that in para 24 of the said judgment, the Apex Court has upheld a different valuation for purposes of Court fee and jurisdiction in such suits for accounts.

9. Learned Counsel for plaintiff has also referred to a short order of Division Bench of this Court in *M/s Fenner India Ltd. v. Salbros Enterprises Pvt. Ltd.*, 1997 PTC (17)

(DB) where it was held that there can be difference of valuation for purposes of Court fees and jurisdiction.

10. Learned Counsel for the defendants have emphasized on the law laid down in the case of M/s Commercial Aviation and Travel v. Vimla Pannalal's case (supra). Learned Counsel submit that the plaintiff has himself valued the suit at Rs.50,00,050 albeit for purposes of valuation. However, the relevant paragraph states that the same is at least the amount which plaintiff feels would be due and payable on rendition of accounts and the plaintiff must affix court fees on the said amount. In this behalf my attention has also been invited to para 18 of the said judgment where judgment in Meenakshisundaram Chettiar v. Venkatachalam Chettiar, AIR 1979 SC 989 has been considered to come to the conclusion that the amount at which the plaintiff values the relief sought for should be a reasonable estimate.

11. Learned counsel for defendants has also pointed out and referred to the judgment of the Apex Court in Abdul Hamid Shamsi v. Abdul Majid, AIR 1988 SC 1150 which is to the same effect directing that though the plaintiff is allowed to give his tentative valuation and ordinarily the Court is not to examine the

correctness of the valuation chosen, the plaintiff cannot act arbitrarily in this matter. Learned Counsel for defendants has laid emphasis on two judgments of the same learned Judge of this Court where these very judgments of the Apex Court have been considered. These two cases are of Suit No.1584/1994, Eastman Kodak Company v. M/s M.R. Electronics and ors. 1994 (31) DRJ 485; 56 (1994) DLT 79; 1995 (15) PTC 146 (Del), decided on 1.8.1994 and Suit No.412/1994, Automatic Electric Ltd. v. R.K. Dhawan & anr., 57 (1995) DLT 49; 1999 PTC (19) 81 (Del), decided on 17.10.1994. Vijender Jain, J. in the said two judgments has referred to the fact that when there is basis available for valuation for purposes of Court Fee, it is not open to the plaintiff value it arbitrarily. These were the cases where the plaintiff claimed world-wide turn over running into crores of rupees and it was held in view thereof that for purposes of rendition of accounts for payment of Court fees the valuation cannot be much smaller amount than fixed for purposes of jurisdiction.

12. I am in full agreement with the view expressed by Vijender Jain, J. on the aforesaid issue. In my considered view, that truly reflects position as laid down by the Apex Court in Abdul Hamid Shamsi v. Abdul Majid case (supra) and M/s Commercial Aviation

and Travel v. Vimla Pannalal case (supra). There can be no doubt about the proposition that insofar as the valuation for purposes of Court fees is concerned in a case for rendition of accounts under Section 7(iv) of the Court Fees Act, it has been left to the plaintiff to affix valuation. At the same stage, it has been held that this valuation cannot be arbitrarily. In the present case, the plaintiff himself has valued the turn over into thousands of crores and claims damages for infringement of the trademark of the plaintiff and passing off. These damages have not been quantified but accounts have been claimed from the defendants for allegedly using the trade marks improperly and making profits to the detriment of the plaintiff. With such reputation world-wide and the grievance of the plaintiff, it can hardly be stated that the amount which would be found due on rendition of accounts can be said a meager amount as alleged of Rs.5,00,050 for purposes of Court Fees. The most material fact is that for purposes of suit valuation, the plaintiff in para 42 himself has stated that it is expected that at the time of rendition of accounts the plaintiff shall be entitled to an amount in excess of Rs.50,00,000. This is not only a hope but is based on the turnover of the plaintiff running into thousands of crores. Thus finding in para 24 of the judgment in M/s Commercial Aviation and Travel v.

Vimla Pannalal case (supra) would of little assistance to the plaintiff.

13. I am of the considered view that the valuation for purposes of Court fee made by the plaintiff is clearly arbitrary and the Court has reasonable material to come to the conclusion, especially in view of the averment of the plaintiff himself based on his own sales figures, that amount in excess of Rs.50,00,000 would be due and payable the plaintiff on rendition of accounts, if the plaintiff succeeds in the suit. Plaintiff is thus required to pay Court fee on the amount of Rs.50,00,050."

47. We agree with the felicitous reasoning given by the learned Single Judge Hon'ble Mr. Justice S.K. Kaul which in turn followed Hon'ble Mr. Justice Vijender Jain's erudite judgments in

(i) Wockhardt Veterinary Ltd. v. M/s Raj Medicos & anr., 1998 RLR 353 (supra-13).

(ii) Eastman Kadak v. M.R. Electronics, 1994 (31) DRJ 485; 56 (1994) DLT 79; 1995 (15) PTC 146 (supra-7).

(iii) *Automatic Electric Ltd. v. R.K. Dhawan*, 57 (1995) DLT 49; 1999 PTC (19) 81 Del.

48. We fully endorse and adopt the view taken by the two learned Single Judges and with respect find ourselves unable to accept the reasoning of the Division Bench in *Wockhardt v. M/s Raj Medicos (supra-14)* and *Fenner India Ltd. v. Salbros Enterprises Pvt. Ltd. (supra-10)*, which was followed in *P.M. Diesels Ltd. v. Patel Field Marshal Industries (supra-12)*, as these three judgments had failed to notice the law laid down by the Hon'ble Supreme Court in the cases of *Commercial Aviation (supra-6)* and *Abdul Hamid Shamsi (supra-5)*. In the normal course, if a Division Bench does not agree with another Division Bench the matter ought to be referred to a Larger Bench. However, since we have found the Division Bench in *Fenner India (supra-10)* case not to have noticed the binding judgments of the Hon'ble Supreme Court in *Commercial Aviation (supra-6)* and *Abdul Hamid*

Shamsi (supra-5), we have laid down the law by following the above judgments of the Hon'ble Supreme Court, as summed up below:-

a. Section 7 clause (iv) of the Court Fees Act is an exception to all the clauses of Section 7 of the Act, as in all other clauses, the court fees has to be paid ad-valorem on the value of the relief sought. This departure from normal rule has been made deliberately for the simple reason that in case of suits under clause (iv) of Section 7 of the Act it is not possible to give an exact money valuation. It is therefore undeniable that under the terms of this Section the plaintiff is to state the amount at which he values the relief sought by him when his case is within the ambit of the said clause. The reason behind this provision seems to be that in cases in which the plaintiff is given option to value his claim, it is really difficult for the Court to value the claim with any precision or definiteness. In a suit for accounts, the correct amount which may be payable by one party to the other can be ascertained only when the

accounts are examined and it is not possible to give an accurate valuation of the claim at the inception of the suit. Therefore, the plaintiff has been allowed to assess his own valuation.

b. Section 8 of the Act makes it clear that in a suit filed under Section 7(iv) of the Court Fees Act, the value as determinable for the computation of the court fees and the value for the purposes of jurisdiction shall be the same.

c. Section 9 of the Act empowers the High Court to make rules with the previous sanction of the State Government directing that suits of a particular class shall for the purpose of the Court Fees Act and any other enactment for the time being in force to be treated, as if their subject matter were of such value as the High Court thinks fit to specify in this behalf.

d. High Court can frame rules under Section 9 of the Act when it is of the opinion that the valuation as fixed under Section 7 of the Court Fees Act is such that it

does not admit of being satisfactorily valued. This Section acts like a proviso to Section 8 of the Act.

e. Section 7 of the Delhi High Court Act extended rules and orders framed by the Punjab High Court as applicable to Delhi. Delhi High Court framed its own rules under Section 9 of the Act which are incorporated in Chapter III, Part C, Delhi High Court Rules, Practice and Procedure. Rule 4 as framed therein is applicable in suits for accounts of the nature before us. According to these rules, value for the purposes of court fees is as determined by the Court Fees Act, 1870 and value for the purposes of jurisdiction for the purposes of Suits Valuation Act, 1887 and the Punjab High Court Act, 1918, as valued by the plaintiff in the plaint subject to the determination by the Court at any stage of the trial.

f. In view of the Rule 4 as framed by the High Court of Delhi, the plaintiff is at liberty and is allowed to give his own tentative valuation for the purposes of court fees and jurisdiction. Generally, the Court cannot examine the correctness of the valuation as placed by

the plaintiff, but the Court is empowered at any stage of the case to reject under Order 7 Rule 11(b) the valuation as fixed by the plaintiff, if it is of the view that plaintiff has valued the suit arbitrarily capriciously and has chosen to give a ridiculous figure which is not borne out from the record tantamounting to not exercising his discretion reasonably in this regard. The plaintiff has not been given absolute right or option to place any valuation whatever on such relief and where he manifestly and deliberately undervalues and underestimates the same the Court is not silent and impotent spectator thereof and has clear jurisdiction to interfere. Any stage of the trial would certainly include even the time when the suit is first taken up for consideration by the court.

g. Before rejecting the valuation as fixed by the plaintiff the Court has to see if there is positive material or objective standard on the record to indicate that he has undervalued the suit but if there is no positive

material or objective standard, the Court has to accept the plaintiff's valuation.

49. Keeping in mind the rationale as summed up above, now we have to see whether the plaintiff has valued the present suit for purposes of court fees and jurisdiction rationally and if the valuation as fixed by the plaintiff is arbitrary whimsical and is not borne out from any material on the record and he has undervalued the suit for purposes of court fees.
50. In para C of the prayer clause of the plaint, the plaintiff valued the relief of rendition of accounts for the purposes of jurisdiction for Rs. 20 lacs as the plaintiff estimated that such an amount would be founded due to the plaintiff on account of being rendered and plaintiff also undertook to pay the additional court fee as would be found due on determination of the actual amount after they are rendered and ascertained by the Court. It reads as follows:

“(c) For an order for rendition of accounts of profits, illegally earned by the Defendant, it is valued at Rs.1000/- for purposes of court fee and the requisite amount of court fee of Rs.150/- has been affixed. This relief is valued at Rs.20,00,000/- for the purposes of jurisdiction as the Plaintiff estimates that such an amount shall be found due to the Plaintiff on accounts being rendered. The Plaintiff undertakes to pay such additional Court fee as would be found due when the actual amount is rendered and ascertained by this Hon’ble Court. The plaintiff is separately valuing the plaint for the purposes of court fee and jurisdiction in terms of the judgments of the Division Bench of this Hon’ble Court reported in 67 (1997) DLT 673, 1998 PTC 260 and in the unreported decision in RFA (OS) 62/98 dated 21.5.98.”

51. In para 13 of the plaint plaintiff has given its readily available sales figure for the period from 1977 to June 2004. These yearly sales run into lacs of rupees and sale for the period from January 2004 to June 2004 is shown as Rs. 3421.40 lac. It is stated further in this paragraph of the plaint that sale figures indicate, rather

demonstrate the popularity, vast goodwill and reputation of the plaintiff's products amongst the trade and public. Plaintiff is a company which is running its business since July 1999 having its head office at Mumbai. Its turnover is in lacs of rupees. The claim of the plaintiff as stated in para 13 is also borne out from the copies of various invoices placed on the record by the plaintiff company. These invoices (totaling to 18) relate back to the year 1981.

52. Therefore, under the circumstances, we find that respondent/plaintiff has arbitrarily and whimsically undervalued the suit for the purposes of court fees. Even otherwise if the suit is valued at Rs. 20 lakh and above for the purpose of jurisdiction then in our view court fees at least on such valuation has to be paid on the basis of such evaluation. An amount of Rs. 20 lacs is estimated to be founded due to it on accounts being rendered. In the present case, the plaintiff has fixed valuation for the purposes of jurisdiction at Rs. 20 lacs

with the sole objective to confer jurisdiction on this Court as this court will have pecuniary jurisdiction only if the valuation of the suit for the purposes of jurisdiction is above Rs. 20 lacs, whereas in normal course, in view of Section 15 of the Code of Civil Procedure, the pecuniary jurisdiction would lie with the District Judge. This is a peculiar circumstance which has arisen in Delhi as most of other High Courts in the country do not have original side jurisdiction and such like suits are filed in the court of District Judge only. Another feature which we have noticed in that such disputes as to court fees are frequently raised in I.P.R. litigation mainly by corporations having turnover in crores and occupy valuable time of the court in this avoidable controversy on court fees. We are also of the view that once the Single Judge finds that whimsical and arbitrary averments to avoid paying requisite court fees have been made, henceforth deterrent costs may be imposed on such litigants.

53. The respondent/plaintiff, therefore, should have paid the ad-valorem court fees on the valuation of the suit at Rs. 20,00,800/-. Under these circumstances, we have two options; either to reject the plaint for non-payment of requisite court fees under order 7 Rule 11 (b) of Code of Civil Procedure or to return it to the plaintiff for presentation in the competent court of jurisdiction. Since the dispute has now been settled and the respondent has paid the ad valorem court fees, we are not passing any consequential direction.

(ARUNA SURESH)
JUDGE

(MUKUL MUDGAL)
JUDGE

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